



HIGH COURT OF ANDHRA PRADESH
TUESDAY ,THE SIXTEENTH DAY OF APRIL
TWO THOUSAND AND NINETEEN

PRESENT

THE HONOURABLE SRI JUSTICE C.PRAVEEN KUMAR
THE HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY
WRIT PETITION NO: 33478 OF 2018

Between:

1. Prakasam Aided U.P. School Indira Nagar, Addanki, Addanki (M), Prakasam District, represented by its Correspondent Tanguturi Prakasam.
2. M.C.S.R.M. Aided U.P. School Ankireddipalli, Racharla Mandal, Prakasam District, represented by its Manager/Correspondent M. China Venkata Reddy
3. V.V.S.R.C. Aided Primary School Kothapalli of Narayapalle, H.M.Padu Mandal, represented by its Correspondent V. Rama Krishna Reddy. -
4. Samavesam High School Ongole, Prakasam District, represented by its Correspondent T. John Krupadanam.
5. Hindu Aided Elementary School Gaddalagunta, Ongole (M), Prakasam District, represented by its Manager S. Nirmala Kumari..
6. A.A.A. Primary School Pellur, Ongole (M), Prakasam District, represented by its Correspondent D. Suvarnamma.
7. Hindu Aided Elementary School Emanipalem, Ongole, Ongole (M), Prakasam District, represented by its Manager K. Padmavathi.
8. Aided C.P. School L. Rajupalem, Chimakurthi Mandal, Prakasam District, represented by its Correspondent Y. Sudhakar Suri.
9. S.V. Aided Primary School Singarayakonda, Prakasam District, represented by its Correspondent Shaik Sattar Basha.
10. N.M.C. Aided Primary School Ravivaripalem, Tangutur Mandal, Prakasam District, represented by its Correspondent D. Seetharamaiah.
11. G.M.D.C. Aided Primary School Chejerla, Ongole (M), Prakasam District, represented by its Correspondent S. Dhanaraj.
12. Ravindrabharathi Aided U.P. School Ramnagar, Addanki, Addanki (M), Prakasam District, represented by its Correspondent Thota China Madduleti.
13. J.V.N.A.A. U.P. School Rajupalem, Martur Mandal, Prakasam District, represented by its Manager and Correspondent B. Elisha Babu.
14. A.A.A. Primary School Pamidipadu, Korisapadu Mandal, Prakasam District, represented by its Manager R. Jeevaratnamma.
15. Aided Primary School Ambedkar Nagar, Koppolu, Ongole Mandal, Prakasam District, represented by its Manager B. Vijayamma.
16. Sree Srinivasa Aided High School Nehru Nagar, Cumbum, Prakasam District, represented by its Correspondent P. Lakshmi Devi.
17. A.B.M. Aided High School Gopanipalli, Komarole (M), Prakasam District, represented by its Correspondent T. Vimalamma.
18. A.B.M. Aided Primary School Gopanipalli, Komarole (M), Prakasam District, represented by its Correspondent T. Vimalamma.
19. Aided U.P. School Ethamukkala, Kothapatnam (M), Prakasam District, represented by its Manager P. V. S. Uma Maheswara Rao.
20. Hindu Aided Elementary School Pamidipadu, Korisapadu (M), Prakasam District, represented by its Secretary and Correspondent R. Seetharamarao.



21. Aided Elementary School Uppugunduru, N.G. Padu (M), Prakasam District, represented by its Secretary and Correspondent S. Chinna Somaiah.
22. S.R.R. U.P. School Ramakur, J. Pangalur Mandal, Prakasam District, represented by its Manager/Correspondent L. Srimannarayana.
23. P.V.S. Aided Elementary School Pothavaram, N.G. Padu (M), Prakasam District, represented by its Manager and Correspondent P. Narasimhacharyulu.
24. Aided Elementary School Chinna Nandipadu, Parchur (M), Prakasam District, represented by its Manager S. Chandra Sekhar Rao.
25. R.J.H. Aided Elementary School Thimmasamudram, N.G. Padu Mandal, Prakasam District, represented by its Manager R. Sankaranarayana.
26. Hindu Aided Primary School Cherukur, Parchur (M), Prakasam District, represented by its Correspondent K. V. L. Satyanarayana Sarma.
27. A.A. Elementary School Dasarajupalli, Ongole Mandal, Prakasam District, represented by its Manager M. Prabhakar.
28. P.V.C. Aided Elementary School Maddiralapadu, N.G. Padu Mandal, Prakasam District, represented by its Secretary/Correspondent V. Vijaya.
29. D.M.S.B.C. Girls High School Yerragondapalem, Prakasam District, represented by its Correspondent M. David Raju.
30. S.V.V.S. A.P. School Ramireddypalli, Donakonda (M), Prakasam District, represented by its Correspondent V. Krupamma.
31. Sri Vijaya Aided U.P. School Jawharnagar Colony, Markapur (M), Prakasam District, represented by its Correspondent Ch. Vijaya Kumari.
32. S.U.M. Aided U.P. School Manepalli, Pullacheruvu (M), Prakasam District, represented by its Secretary and Correspondent U. V. Ramana.

...PETITIONER(S)

AND:

1. The State of Andhra Pradesh Represented by its Principal Secretary, School Education Department, Secretariat, Velagapudi, Guntur District.
33. The Commissioner and Director of School Education Andhra Pradesh, Ibrahimpatnam, Krishna District.

...RESPONDENTS

Counsel for the Petitioner(s): P V S S S RAMA RAO

Counsel for the Respondents: GP FOR SCHOOL EDUCATION (AP)

The Court made the following: ORDER



IN THE HIGH COURT OF ANDHRA PRADESH
(Special Original Jurisdiction)

TUESDAY, THE SIXTEENTH DAY OF APRIL
TWO THOUSAND AND NINETEEN

PRESENT

THE HON'BLE THE ACTING CHIEF JUSTICE C.PRAVEEN KUMAR
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NOS: 28912, 28924, 29026, 29470, 30456, 32262,
32315, 32337, 33200, 33421, 33478, 34160, 34229, 35133,
37838, 43104, 45079, 45521 AND 32808 OF 2018

WP NO: 28912 OF 2018

Between:

1. ESTER AXENE RES. HIGH SCHOOL, Konthamuru, Rajahmundry East Godavari District, Andhra Pradesh, Rep by its Correspondent. Sri. K Prabhakara Rao
2. ESTER AXENE RES. ELEMENTARY SCHOOL Konthamuru,, Rajahmundry East Godavari District, Andhra Pradesh, Rep by its Correspondent. Sri. K Prabhakara Rao
3. NEHRU AIDED GROUP OF SCHOOLS, Ashok Nagar, Kakinada East Godavari District, Andhra Pradesh, Rep by its Correspondent. Sri. M Adinarayana
4. M.N.M. HIGH SCHOOL, Gudavalli, Guntur District, Andhra Pradesh, Rep by its Correspondent. Sri. G Rajendra Prasad
5. TABITHA IDEAL AIDED HIGH SCHOOL, Pithapuram, East Godavari District, Andhra Pradesh, Rep by its Correspondent. Sri. Madiki Nimma Kumari
6. S.R.H.AIDED ELEMENTARY SCHOOL, Ramaraogudem, Denduluru Mandal West Godavari District, Andhra Pradesh, Rep by its Correspondent. Sri. A Uma Maheswara Rao
7. Smt K K V M ELE. SCHOOL, Kattapuveedhi, Eluru West Godavari District, Andhra Pradesh, Rep by its Correspondent. Sri. A Uma Maheswara Rao
8. S.V.K.P and S.K.V.R GIRLS HIGH SCHOOL, Penugonda, West Godavari District, Andhra Pradesh, Rep by its Correspondent. Sri. K Ramachand a Raju
9. DVPRA UP SCHOOL, Mallavaram, West Godavari District Andhra Pradesh, Rep by its Correspondent. Sri. YDVPJ Prabhakara Rao
10. VIGJNANA PRADAYINI A.U.P. SCHOOL (EM), SS Meeta, Rahamahendravaram, East Godavari District, Andhra Pradesh, Rep by its Correspondent. Sri. T Srinivas
11. POWERS AIDED U.P. SCHOOL, Andhra Nagar, Rajamahendravaram West Godavari District, Andhra Pradesh, Rep by its Correspondent Smt. V. Padmaja
12. K.P.D.T. HIGH SCHOOL, Ashok Nagar, Elluru West Godavari District, Andhra Pradesh, Rep by its Correspondent. Smt. P. Annapurna
13. S.V.V. HINDU AIDED ELEMENTARY SCHOOL, Sadasivapuram, Bhimadolu Mandal West Godavari District, Andhra Pradesh, Rep by its Correspondent. Smt. D Damyanthi



14. CGM AIDED PRIMARY SCHOOL, Chebrolu, Unguturi Mandal West Godavari District, Andhra Pradesh, Rep by its Correspondent. Smt. A V S Mahalakshmi

...PETITIONERS

AND

1. The State of Andhra Pradesh, rep by its Principal Secretary, School Education Department Secretariat, Velgapudi, Guntur District
2. The Commissioner and Director of School Education, Andhra Pradesh, Ibrahimpatnam, Krishna District

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an appropriate writ more in the nature of Writ of Mandamus declaring the GO Ms. No. 43 Dt. 09-08-2018 of the 1st Respondent, bringing amendments to Rule 12 of GO Ms NO. 1 Dated.01-01-1994 in the matter of making appointments to the staff in private Aided institutions, as bearing arbitrary and illegal and unconstitutional violating article 14 and 30(1) of the constitution of India inasmuch as it takes away the rights of the managements in making appointments to the staff in the institution and confers the same on authorities, and consequently set-aside the same conferring the right to administer institutions by the managements and in the appointments of the institution and

IA NO: 1 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the GOMs.No.43, School Education PS Department, dated: 09-08-2018 at the interest of Justice.

IA NO: 2 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to take note the clarification given above in regard to the status of the institutions that are the Petitioners in the Writ Petition at the interest of justice.

Counsel for the Petitioners:SRI. CH SAMSON BABU

Counsel for the Respondents: GP FOR SCHOOL EDUCATION

**WP NO: 28924 OF 2018****Between:**

Sri Vyasasramam Yerpedu, Chittoor District, rep.by its Peetadhipathi Sri Paripurnanandagiri Swamy, S/o Vidhyanandagiri Swamy, aged about 69 years, R/o. Yerpedu, Chittoor District.

...PETITIONER**AND**

1. The State of Andhra Pradesh, rep.by its Principal Secretary, School Education Department, Secretariat, Velagapudi, Amaravathi, Guntur District.
2. The Commissioner and Director of School Education, State of Andhra Pradesh, Ibrahimpatnam, Vijayawada, Krishna District.
3. The Regional Joint Director of School Education, Chittoor, Chittoor District
4. The District Educational Officer, Chittoor District, Chittoor.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ or direction more particularly one in the nature of Writ of Mandamus, declaring the impugned G.O.Ms.No. 43, dt. 09.08.2018, passed by the 1st respondent as illegal, arbitrary, violative of Art. 14, 21-A, 25, 26, 28 and 45 of the Constitution of India, Section- 6 (d) of The Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 and Proviso to Section-60 of The Andhra Pradesh Education Act, 1982 and also violative of principles of natural justice and consequently set-aside the same.

IA NO: 1 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the operation of the impugned G.O.Ms.No. 43, dt. 09.08.2018, passed by the 1st respondent, to continue the process of recruitment procedure under Rules made under G.O.Ms.No. 1, Education (P.S.2) Department, dt. 01.01.1994, pending disposal of the main Writ Petition.

Counsel for the Petitioner: SRI. G. RAMA SHARMA**Counsel for the Respondents: GP FOR SCHOOL EDUCATION**

**WP NO: 29026 OF 2018****Between:**

CONVENTION OF BAPTIST CHURCHES OF THE NORTHER CIRCARS (CBCNC), Regd. No. 16/48-49 Head Quarters, CBM Compound, Kakinada East Godavari District, Andhra Pradesh, Rep by its Convenor. Sri. Talluri Prasanna Kumar

...PETITIONER**AND**

1. The State of Andhra Pradesh, rep by its Principal Secretary, School Education Department Secretariat, Velgapudi, Guntur District
2. The Commissioner and Director of School Education, Andhra Pradesh, Ibrahimpatnam, Krishna District

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an appropriate writ more in the nature of Writ of Mandamus declaring the GO Ms. No. 43 Dt. 09-08-2018 of the 1st Respondent, bringing amendments to Rule 12 of GO Ms NO. 1 Dated. 01-01-1994 in the matter of making appointments to the staff in private Aided institutions, as being arbitrary and illegal and unconstitutional violating article 14 and 30(1) of the Constitution of India inasmuch as it takes away the rights of the managements in making appointments to the staff in the institution and confers the same on authorities, and consequently set-aside the same conferring the right to administer the institutions by the managements and in the appointments of the institution.

IA NO: 1 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the GOMs.No.43, School Education PS Department, dated. 09-08-2018 at the interest of Justice.

IA NO: 2 OF 2018**Between:**

Dasari Yacob, Convenor, Education Committee Convention of Baptist Churches of the Northern Circars, R/o. Kankipadu, Krishna District.

...IMPLEAD PETITIONER/PROP. 3RD RESPONDENT

**AND**

1. The Convention of Baptist Churches of the Norther Circars (CBCNC), Regd. No. 16/48-49 Head Quarters, CBM Compound, Kakinada East Godavari District, Andhra Pradesh, Rep by its Convenor. Sri. Talluri Prasanna Kumar
...Writ Petitioner
2. The State of Andhra Pradesh, rep by its Principal Secretary, School Education Department Secretariat, Velgapudi, Guntur District
3. The Commissioner and Director of School Education, Andhra Pradesh, Ibrahimpatnam, Krishna District

...RESPONDENTS

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to permit the petitioner herein to implead as the 3 respondent in the above the writ petition and all miscellaneous Applications.

Counsel for the Petitioner: SRI. CH SAMSON BABU**Counsel for the Respondents: GP FOR SCHOOL EDUCATION****Counsel for the Proposed Respondent: SRI. AKA VENKATARAMANA****WP NO: 29470 OF 2018****Between:**

1. AFDT HIGH SCHOOL, Malkipuram, Rajole Mandal East Godavari District, Andhra Pradesh, Rep by its Correspondent. Sri. M V Satyanarayana Murthy
2. GNANIKETAN EM & TM AIDED SCHOOLS Lalitha Nagar, Vishakapatnam Vishakapatnam District, Andhra Pradesh Rep by its Correspondent. Smt P Sunitha Kumari
3. KASTURIDEVI GIRLS HIGH SCHOOL Damagitta, Nellore, Nellore District, Andhra Pradesh, Rep by its Correspondent. Sri. J V Reddy
4. GUILD OF SERVICE AIDED SCHOOLS Srirama Nagar, Kakinada East Godavari District, Andhra Pradesh, Rep by its Correspondent. Smt. Y Vasundara Mehar

...PETITIONERS**AND**

1. The State of Andhra Pradesh rep by its Principal Secretary, School Education Department, Secretariat, Velgapudi, Guntur District.
2. The Commissioner & Director of School Education Andhra Pradesh, Ibrahimpatnam, Krishna District

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an appropriate writ more in the nature of Writ of Mandamus declaring the GO Ms. No. 43 Dt- 09-08-2018 of the 1st Respondent, bringing amendments to Rule 12 of GO Ms NO. 1 Dated 01-01-1994 in the matter of making appointments to the staff in private



Aided institutions, as being arbitrary and illegal and unconstitutional violating article 14 and 30(1) of the Constitution of India inasmuch as it takes away the rights of the managements in making appointments to the staff in the institution and confers the same on authorities, and consequently set-aside the same conferring the right to administer the institutions by the managements and in the appointments of the institution and issue such other Writ or Order or direction as deemed fit and proper in the circumstances of case.

IA NO: 1 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the GOMs.No.43, School Education PS Department, dated: 09-08-2018 at the interest of Justice.

Counsel for the Petitioners: SRI. CH SAMSON BABU

Counsel for the Respondents: GP FOR SCHOOL EDUCATION

WP NO: 30456 OF 2018

Between:

1. Chenchu Aided Upper Primary School, Rep. by its President and Correspondent, Sri B. Chittaranjan Das, S/o. Krishna Murthy, aged 74 years, R/o. Pakanati Estate, Flot No.405, Chakalibavi Centre, Etukuru Road, Guntur 522 003.
2. Patibandla Sitaramaiah High School, Patibandla Sitaramaiah High School, Rep. by its Correspondent, Sri Vasireddi Jayaramayya, S/o. V. Narayana Rao, Aged 58 years, R/o. Lakshmipuram, Guntur
3. S.K.D.V.S. High School, Rep. by its Secretary and Correspondent, Sri K. Vasudevara Naidu, S/o. Govinda Naidu, aged 62 years, Pinapadu, Tenali, Guntur District.
4. S.V.S.C. High School, Rep. by its Correspondent, Sri Sistla Kodanda Ramesh, S/o. late S.V. Sastry, Aged 62 years, Seetharampuram, Nuzella, Vinukonda Mandal, Guntur District.
5. Dr. B.R. Ambedkar Aided Elementary School, Rep. by its Correspondent, Sri Savabathini Edukondalu, S/o. S. Yellamanda, aged 37 years, R/o. H.No.19-9-107, Etukuru Road, Gandhinagar Main Road, Guntur. 522 003.
6. Hindu Aided Upper Primary School, Rep. by its Correspondent, Sri Sairam Pantulu, S/o. Bhairava Swamy, aged 66 years, Repalle, Guntur District
7. Aided Hindu Elementary School, Rep. by its Manager, Smt. Kamarajugadda Annapurna, W/o. K. Sitaramanjaneya Sarma, aged 81 years, Borravaripalem, Nizampatnam Mandal, Kuchinapudi Post, Guntur District.
8. A.B. Primary High School, Rep. by its Correspondent, Sri P. Ramprasad, S/o. Ramachandraiah, aged 56 years, Pushudavaripalem, Cherukupalli Mandal, Guntur District
9. I.B.H.A.U.P. School, Rep. by its Correspondent, Sri Odugu Sambasiva Rao, S/o. Narasimham, Kothapaiem, Nizampatham Mandal. Guntur District.



10. S.M.V.P. School, Rep. by its Correspondent, Sri Ch.Y. Murahari Rao, S/o. Varaprasada Rao, Aged 49 years, Cherukupalli, Guntur District.
11. Hindu Aided Primary School, Rep. by its Correspondent, Smt. B. Ratna Susheela, W/o. Bhakthavatsalam, Aged 76 years, Vuchavaripalem, Cherukupalli Mandal, Guntur District.
12. Sri Ganesh Committee Aided Elementary School,, Rep. by its Correspondent, Sri K. Ramulu, S/o. K. Muthaiah, aged 80 years, R.N. Kshetram, Guntur-4
13. Sri Sitarama Vidyalayam,, Rep by its Correspondent, Ms. R.V. Leela Sundari, D/o. Ramapichaiah, aged 51 years, Sri Sitarama Vidyalayam, R. Agraharam, Guntur - 4.
14. Harijana Aided Elementary School, Rep. by its Correspondent, Smt. S. Rajeswaramma, W/o. M. Prabhakar Rao, aged 70 years, Akulavari Thota, 15t Line, Guntur.
15. S.T.J.U.P. School, Rep. by its Correspondent, Sri T. Gandhi Prasad, S/o. Krishnaiah, aged 85 years, Kavuru, Cherukupalli Mandal, Guntur District.
16. Aided Elementary School, Rep. by its Correspondent, Sri A.V. Rajeswara Rao, S/o. Venkatachalam, Aged 56 years, Srungarauram, Bapatla Mandal, Guntur District.
17. S.R.T.A. Primary School, Rep. by is Correspondent, Sri L. Nagamalleswara Reddy, S/o. Lakshmi Reddy, Aged 57 years, Varevaripalem of Ponnappalli, Cherukupalli Mandal, Guntur District.
18. S.S.H.A. Primary School,, Rep. by its Correspondent, Sri D.S.S. Prasad, S/o. Hanmantha Rao, aged 69 years, Padamatipalem of Rajavola, Cherukupalli Mandal, Guntur District.
19. Aided Hindu Elementary School,, Rep. by its Manager and Correspondent P. Usha Rani, W/o. Naresh, aged 47 years, R/o. Pillalavaripalem, Nizampatnam Mandal, Guntur District.
20. Aided Upper Primary School (MV),, Rep. by its Manager and Correspondent, M. Srikanth Sridhar, S/o. M. Venkateswarlu, Bhattiprolu (P.O.), Guntur District.
21. Aided Elementary School (DS), Rep. by its Manager and Correspondent, Lt. Col.D.M.Vasanthamma (Retd), D/o. D.Satyanandam, Bhattiprolu (P.O.),
22. Hindu Aided Elementary School, Rep. by its Manager, Deevi Siva Rambabu, S/o. D.Venkateswarlu, Aged 62 years, Vemavaram, Bhattiprolu Mandal, Guntur District.
23. N.M.R.A.U.P. School,, Rep. by its Correspondent, Smt. D. Vasantaleela, W/o.D. Moses, aged 73 years, John Nagar, Bapatla, Guntur District.

...PETITIONERS

**AND**

1. The State of A.P, Rep by its Special Chief Secretary to the Government, Secretariat, Velagapudi, Amaravathi, Guntur District.
2. The State of A.P., Rep by its Principal Secretary, School Education, Secretariat, Velagapudi, Amaravathi, Guntur District
3. The Commissioner, School Education, Government of Andhra Pradesh, 24-125, Vijayawada - Mylavaram Road, Bhimaraju Gutta, Ibrahimpatnam, Krishna District - 521 456
4. The Regional Joint Director of School Education, Guntur, Guntur District.
5. The District Educational Officer, Collectorate Compound, Guntur District at Guntur.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ or order one particularly in the nature of Writ of Mandamus declaring the G.O.Ms.No.43 dated 09.08.2018 amending the A.P. Educational Institutions (Establishment, Recognition, Administration and Control of Schools under Private Management) Rules, 1993, in particular amending Rule 12 omitting Rule 13 as illegal and in conflict with the provisions of the A.P. Education Act, 1982, consequently direct the respondents to permit the petitioner schools to fill the vacant aided posts in accordance with the Rule 12 of the amended rules framed under G.O.Ms.No.1 dated 01.01.1994.

IA NO: 1 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the G.O.Ms.No.43, dated 9-8-2018, pending disposal of the Writ Petition.

Counsel for the Petitioners: SRI. N SUBBA RAO

Counsel for the Respondents: GP FOR SCHOOL EDUCATION

WP NO: 32262 OF 2018

Between:

1. The KVN Aided Primary and High School, Allagada Village and Mandal Kurnool District Rep by its Correspondent Shaik Jeelan Basha
2. VIII Ward Partly Aided High School Velugodu, Kurnool District Rep by its Correspondent Sri G B J Raju

...PETITIONERS



AND

1. The State of Andhra Pradesh, Rep by its Principal Secretary, School Education Department Secretariat, Velgapudi, Guntur District
2. The Commissioner and Director of School Education Andhra Pradesh, Ibrahimpatnam, Krishna District

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an appropriate writ more in the nature of Writ of Mandamus declaring the GO Ms. No. 43 Dt 09-08-2018 of the 1st Respondent, bringing amendments to Rule 12 of GO Ms NO. 1 Dated 01-01-1994 in the matter of making appointments to the staff in private Aided institutions, as being arbitrary and illegal and unconstitutional violating article 14 and 30(1) of the Constitution of India inasmuch as it takes away the rights of the managements in making appointments to the staff in the institution and confers the same on authorities and consequently set-aside the same conferring the right to administer the institutions by the managements and in the appointments of the institution and issue such other Writ or Order or direction as deemed fit and proper in the circumstances of case.

IA NO: 1 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the GOMs.No.43, School Education PS Department, dated 09-08-2018 at the interest of Justice.

Counsel for the Petitioners: SRI. CH SAMSON BABU

Counsel for the Respondents: GP FOR SCHOOL EDUCATION .

WP NO: 32315 OF 2018

Between:

INDIA CHRISTIAN MISSION CHURCH (ICMC), Regd. No. 432/2000
13-3-5/1, Bishops House, ICM Compound Railway Station Road, Eluru -
534005 West Godavari District, Andhra Pradesh, Rep by its Bishop/General
Manager Sri. Bishop Dr. John SDR Nakka

...PETITIONERS

AND

1. The State of Andhra Pradesh, rep by its Principal Secretary, School Education Department Secretariat, Velgapudi, Guntur District



2. The Commissioner and Director of School Education, Andhra Pradesh, Ibrahimpatnam, Krishna District

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an appropriate writ more in the nature of Writ of Mandamus declaring the GO Ms. No. 43 Dt. 09-08-2018 of the 1st Respondent, bringing amendments to Rule 12 of GO Ms NO. 1 Dated. 01-01-1994 in the matter of making appointments to the staff in private Aided institutions, as being arbitrary and illegal and unconstitutional violating Article 14 and 30(1) of the Constitution of India inasmuch as it takes away the rights of the managements in making appointments to the staff in the institution and confers the same on authorities, and consequently set-aside the same conferring the right to administer the institutions by the managements and in the appointments of the institution.

IA NO: 1 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the GOMs.No.43, School Education PS Department, dated. 09-08-2018 at the interest of Justice.

Counsel for the Petitioner:SRI. CH SAMSON BABU

Counsel for the Respondents: GP FOR SCHOOL EDUCATION

WP NO: 32337 OF 2018**Between:**

1. Chowdeswari Devi Oriental High School, Kadapa, rep by its Correspondent, G.Mohan Reddy, S/o G.Subba Reddy, Aged about 60 years.
2. Sri Mitta Malleswara Oriental High School, Pulivendla, Kadapa District, rep by its correspondent, Smt.V.Lakshmi Devi, W/o V.Lakshminarayana, Aged about 61 years.
3. S.B.V.D.Sabha High School,, Pullampeta, Kadapa District, rep by its Correspondent, N.Sree Ramulu, S/o N.Chennaiah, Aged about 56 years.
4. H.M.M.High School,, Railway Kodur, Kadapa District, Rep by its correspondent, K.M.Deva Sundaram, S/o K.M.Daniel, Aged about 65 years.
5. V.B.V.S.Aided U.P.School,, Ahamed Nagar Street, Proddutur, Kadapa District, rep by its correspondent, L.Chand Basha, S/o L.Jamal Sahab, Aged about 49 years.
6. Mahaboob Aided U.P.School,, Rayachoty, Kadapa District, Rep by its Correspondent, S.Muzaffar Hussain, s/o S.Mahaboob Saheb, Aged 51 years.
7. Sarada Aided U.P School,, Rayachoty, Kadapa District, rep by its correspondent, V.Uma Maheswari, W/o M.Adinarayana Babu, Aged about 55 years.



8. S.L.V.Aided Elementary School, Gopalapuram Village, C.K.Dinne Mandal, Kadapa district, rep by its correspondent, S.Kondaiah, S/o S.Kondaiah, Aged about 70 years.
9. S.N.Y.S.Sanskrit High School, Kondamachupalli, Kothamadhavaram post, Vontimitta Mandal, Kadapa district, Rep by its Correspondent, M.Malleswaraiah, S/o M.Narayana, Aged about 59 years.
10. Sri Raghavendra (T.M.) Aided High School, Allagadda, Kurnool District, Rep by its correspondent, Y.Papi Reddy, S/o Y.P.PULLA Reddy, Aged about 74 years.
11. Sri Kasetty Chinna Venkata Subbaiah High School, Proddatur, Kadapa district, rep by its Correspondent, K.Subrahmanyam, S/o K.Chinna Venkatasubbaiah, Aged about 70 years.
12. Sri Viswa Bharathi Aided U.P.School, 9th ward, Kadapa, Kadapa District, Rep by its correspondent, Shaik Shafi Ahmed, S/o S.Mahaboob Basha, Aged about 61 years.
13. Sri Shantiniketan Oriental Elementary School, Sankarapuram, Kadapa District, Rep by its Correspondent, K.Padmavathi, W/o V.L.Narasimhachari, Aged about 73 years.
14. A.V.S.Oriental U.P. School, Madhavaram post, Vontimitta mandal, Kadapa District, rep by its correspondent, A.Subbamma, W/o A.Ramadoss, Aged about 66 years.
15. S.P.S.V.D.Sabha High School, Saraswathipuram, Siddout Mandal, Kadapa District, rep by its correspondent, M.Ramakrishnaiah, S/o M.Venkataiah, Aged about 65 years.
16. Nethaji Aided elementary School, Veerapunayunipalli, Kadapa district, Rep by its correspondent, V.Suneel, S/o V.V.Subba Naidu, Aged about 24 years.
17. Sri Sangameswara High School, Veerapunayunipalli, Kadapa district, Rep by its correspondent, V.Suneel, S/o V.V.Subba Naidu, Aged about 24 years.
18. Gowri Sankar Oriental U.P.School, Bhavani Nagar, Kadapa, Kadapa District, Rep by its Correspondent, U.Nagamani, W/o Late Vijaya Chakradar, Aged about 45 years.
19. S.P.B.V.D.Sabha Elementary School, Saraswathipuram, Siddout Mandal, Kadapa district, rep by its correspondent, M.Ramakrishnaiah, S/o M.Venkataiah, Aged about 65 years.
20. Sri Venkateswara Elementary School, Bayanapali, C.K.Dinne Mandal, Kadapa District, rep by its Correspondent, Smt.Y.Chandrakanthamma, W/o M.P.V.Ramaiah, Aged about 61 years.
21. Sri Venkateswara High School, Bayanapali, C.K.Dinne Mandal, Kadapa District, rep by its Correspondent, Smt.Y.Chandrakanthamma, W/o M.P.V.Ramaiah, Aged about 61 years.
22. Farooq Arabic Oriental Elementary School, Proddatur, Kadapa District, Rep by its Correspondent, K.S.Inayathulla, S/o K.S.Fazululla, Aged about 59 years.
23. Sree Shanthy Aided U.P School, Sastry nagar, kadapa, Kadapa District, Rep by its Correspondent, K.Philomenamma, W/o S.Elias Reddy, Aged about 70 years.
24. Sri Inna Reddy Memorial Aided U.P School, Chinnachowk, Kadapa, Kadapa District, Rep by its correspondent, C.Surendra Natha Reddy, S/o C.Narayanaswamy, Aged about 51 years.
25. Sri Gowri Sankar Oriental School, Vidyanagar, 103/F-1, A.L.Colery, Kadapa, Kadapa District, Rep by its Correspondent, U.Gowri Sankar, S/o U.Ramachandraiah, Aged about 48 years.
26. Sri Sarada Nilayam Aided U.P School, Brahmanapalli Road, Pulivendla, Kadapa, Kadapa District, Rep by its Correspondent, Rachamalla Bayapu Reddy, S/o R.Bayapu Reddy, aged about 71 years.



27. Venkateswara Nikethan Aided Elementary School, Anrgyapuram, Pincha post, Tsundupalli Mandal, Kadapa District, rep by its correspondent, D.Ramsunil Reddy, S/o D.Hanumantha Reddy, Aged about 46 years.
28. Sri Balaji Nikethan Aided Elementary School, Indiramma Colony, Madanapalli Road, Rayachoti, Kadapa district, Rep by its correspondent, P.Rajamani, W/o Krishna Reddy, Aged about 52 years.
29. Sri Santhinikethan Oriental primary school, Dommaranandyala, Mylavaram Mandal, Kadapa District, rep by its correspondent, V.Ramanamma, W/o V.S.Narasimha charyulu, Aged about 71 years.
30. L.M.K.High School, Kanigiri, Prakasham District, Rep by its correspondent, M.Balaji Rao, S/o Late Vengaiah, Aged about 58 years.
31. S.K.G.Oriental High School, Proddatur, Kadapa District, Rep by its correspondent, D.Radhakrishna, S/o D.Subba Raghavulu, Aged about 67 years.
32. St.Jacobs Aided U.P School, Mandlapadu, Giddaluru Mandal, Prakasham District, rep by its Correspondent, V.J.F.Ramesh Babu, S/o V.Samson, Aged about 58 years.
33. St.Jacobs Aided High School, Mandlapadu, Giddaluru Mandal, Prakasham District, rep by its Correspondent, V.J.F.Ramesh Babu, S/o V.Samson, Aged about 58 years.
34. Ambedkar Oriental High School, Ashok Nagar, Chinnachowk, Kadapa, Kadapa district, Rep by its Correspondent, M.Venkata Subbamma, W/o J.Venkata Ramana, Aged about 45 years.
35. S.P.Oriental Upper Primary Aided School, Thiruvengalapuram, Badvel Mandal, Kadapa District, rep by its Correspondent, P.Venkatasubbaiah, Venkatasubbaiah, Aged about 60 years.
36. Yogi Vidyalayam N.G.O.Colony, Kadapa, Kadapa District, Rep by its Correspondent, B.Revathi Devi, W/o Sudhakar, Aged about 60 years.
37. V.C.A.High School, Venkatarreddy palli, M.M.Padu Mandal, Prakasham District, rep by its correspondent, K.Tirupathi Reddy, s/o Late Venkata Reddy, Aged about 86 years.
38. V.C.A.Primary School, Venkatarreddy palli, M.M.Padu Mandal, Prakasham District, rep by its correspondent, K.Tirupathi Reddy, s/o Late Venkata Reddy, Aged about 86 years.
39. V.C.A.primary School, Edaravari palli, M.M.Padu Mandal, Prakasham District, rep by its correspondent, K.Tirupathi Reddy, s/o Late Venkata Reddy, Aged about 86 years.
40. S.S.V.S.A.U.P.School, 28th ward, Cooperative colony, Kadapa District, rep by its correspondent, O.janardhan Raju, S/o O.Subba Raju, Aged about 63 years.
41. Sri B.P.Seshaiah Sanskrit High School, Pullampet, Kadapa District, Rep by its correspondent. A.Chandra Sekhar, S/o A.Rajendra Prasad, Aged about 34 years.

...PETITIONERS

AND

1. The State of Andhra Pradesh,, Rep by its Special Chief Secretary, Government of Andhra Pradesh, AP Secretariat, Velagapudi, Amaravathi, Guntur District.
2. The State of Andhra Pradesh,, Rep by its Principal Secretary, School Education Department, AP Secretariat, Velagapudi, Amaravathi, Guntur District.
3. Commissioner and Director of School Education,, Bhimavaraju Gutta, Ibrahimpattam, Vijayawada, Krishna District, AP.

...RESPONDENTS



Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an order, or direction, more particularly, a writ of Mandamus,

1) Declare the action of the 3rd respondent in declaring the impugned G.O.Ms.No.43 SCHOOL EDUCATION (PS) DEPARTMENT dated 09.08.2018 whereunder the Rules framed in G.O.Ms.No.1 EDUCATION (P.S.2) dated 01.01.1994 was amendment by substituting Rule 12 and omitting Rule 13, as illegal, violative of principles of natural justice, contrary to the provisions of A.P.Education Act and unconstitutional,

2) And consequently to set-aside the G.O.Ms.No.43 SCHOOL EDUCATION (PS) DEPARTMENT dated 09.08.2018,

3) And consequently direct the respondents to permit the petitioner schools to fill-up all the vacancies existing in terms of unamended G.O.Ms.No.1 EDUCATION (P.S.2) dated 01.01.1994.

IA NO: 1 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the respondents to permit the petitioner schools to fill-up all the vacancies existing in terms of un-amended G.O.Ms.No.1 EDUCATION (P.S.2) dated 01.01.1994, pending disposal of the above writ petition.

IA NO: 2 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the impugned G.O.Ms.No.43 SCHOOL EDUCATION (PS) DEPARTMENT dated 09.08.2018, pending disposal of the above writ petition.

Counsel for the Petitioners: SRI. N BHARAT BABU

Counsel for the Respondents: GP FOR SCHOOL EDUCATION



WP NO: 33200 OF 2018

Between:

St Marry Fathima Aided Schools, Nandyal, Kurnool District Andhra Pradesh,
Rep by its Correspondent K A Prakash

...PETITIONER

AND

1. The State of Andhra Pradesh, rep by its Principal Secretary, School Education Department, Secretariat, Velgapudi, Guntur District
2. The Commissioner and Director of School Education, Andhra Pradesh, Ibrahimpatnam, Krishna District

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an appropriate writ more in the nature of Writ of Mandamus declaring the GO Ms. No. 43 Dt. 09-08-2018 of the 1st Respondent, bringing amendments to Rule 12 of GO Ms No. 1 Dated.01-01-1994 in the matter of making appointments to the staff in private Aided institutions, as being arbitrary and illegal and unconstitutional violating article 14 of the Constitution of India inasmuch as it takes away the rights of the managements in making appointments to the staff in the institution and confers the same on authorities, and consequently set-aside the same conferring the right to administer the institutions by the managements and in the appointments of the institution.

IA NO: 1 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the GO Ms. No. 43, School Education PS Department, dated: 09-08-2018 at the interest of Justice.

Counsel for the Petitioner: SRI. M. SRI VIJAY

Counsel for the Respondents: GP FOR EDUCATION

**WP NO: 33421 OF 2018****Between:**

1. The Diocese of Guntur Society, Rep.by its Deputy General Manager Fr Anthony Pilli, Bishop, R/o Chandramouli nagar, Guntur District Guntur
2. The Roman Catholic Mission Management, Rep.by its Deputy General Manager, Fr.G.Michael, R/o Machilipatnam, Krishna Dist.
3. The Diocese Nellore Society, Rep.by its Fr.Arogya Swamy, Bishop, Diocese,Nellore District,
4. The Kadapa Diocese Educational Society, Rep.by its Manager, Bishop G.Prasad, R/o Mariapuram, Kadapa District
5. The Arch. Diocese of Visakhapatnam, Rep.by its Manager Arch. Bishop M.Prakash, Visakhapatnam.
6. St.Anns Society Guntur Provincial, Rep.by its Provincial Sr.Ratnamary, R/o Bharatpet, Guntur District.
7. JMJ. Conjugation, Mangalagiri, Guntur Provincial rep.by its Correspondent Sr. Jayratnabala, R/o Kanuvari thota, Guntur District.
8. St.Anns Society, Visakhapatnam, Rep.by its Correspondent Sr.Kusuma Provincial, R/o Kerlampudi layout, Visakhapatnam.
9. St.Joseph Anncy (India) Educational Society, Rep.by its President Sr.Vianney, R/o Gnanapuram, Visakhapatnam.
10. Srikakulam Diocese Society, Rep. by its Bishop, Rep. by its Bishop, Sri A Innyya, S/o. Asseervadham, Aged 72 years, R/o. Bishop's House Balagathope, Srikakulam, Andhra Pradesh

...PETITIONERS

AND

1. The State of Andhra Pradesh, Rep.by its Prl. Secretary/Spl. General Secretary to Government, School Education(T.S.Dept.), Secretariat, Velagapudi, Amaravathi, Guntur Dist.
2. The Commissioner of School Education, Andhra Pradesh, Ibrahimpatnam Vijayawada.
3. The Regional Joint Director to School Education, Guntur Dist.
4. The Regional Joint Director to School Education, Krishna District.
5. The Regional Joint Director to School Education, Kadapa District.
6. The Regional Joint Director to School Education, Visakhapatnam Dist.
7. The District Educational Officer, Guntur,
8. The District Educational Officer, Krishna District.
9. The District Educational Officer, Machilipatnam, Nellore Dist.
10. The District Educational Officer, Kadapa District
11. The District Educational Officer, Visakhapatnam.
12. The Educational Officer, Srikakulam

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ of Mandamus by setting aside the impugned G.O.Ms.No.43 School Education (PS) Department, dated 09.08.2018 amending Rule 12 by way of substitution and omitting Rule 13 of A.P. Educational Institutions (Establishment, Recognition, Administration and Control of Schools under Private Management) Rules 1993 as illegal, improper, unjust, arbitrary and violative of Article 30(1), 14, 21-A of the Constitution of India and provisions of the A.P. Education Act, 1982 and consequently direct the



Respondent to permit the Petitioners Schools to fill the vacant aided posts in accordance with Rule 12 of the un-amended rule framed in G.O.Ms.No.1, dated 01.01.1994

IA NO: 1 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the respondents permit the Petitioner's Management: to fill up the aided vacancies as per pre-amended Rules of 1993 forthwith pending disposal of the W.P.

IA NO: 2 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the operation of the G.O.Ms.No.43 School Education (PS) Department, dated 09.08.2018 pending disposal of the above Writ Petition.

Counsel for the Petitioners:SRI. K.RAMAMOHAN

Counsel for the Respondents: GP FOR SCHOOL EDUCATION

WP NO: 33478 OF 2018

Between:

1. Prakasam Aided U.P. School, Indira Nagar, Addanki, Addanki (M), Prakasam District, represented by its Correspondent Tanguturi Prakasam.
2. M.C.S.R.M. Aided U.P. School, Ankireddipalli, Racharla Mandal, Prakasam District, represented by its Manager/Correspondent M. China Venkata Reddy
3. V.V.S.R.C. Aided Primary School, Kothapalli of Narayapalle, H.M.Padu Mandal, represented by its Correspondent V. Rama Krishna Reddy.
4. Samavesam High School, Ongole, Prakasam District, represented by its Correspondent T. John Krupadanam.
5. Hindu Aided Elementary School, Gaddalagunta, Ongole (M), Prakasam District, represented by its Manager S. Nirmala Kumari..
6. A.A.A. Primary School, Pellur, Ongole (M), Prakasam District, represented by its Correspondent D. Suvarnamma.
7. Hindu Aided Elementary School, Emanipalem, Ongole, Ongole (M), Prakasam District, represented by its Manager K. Padmavathi.
8. Aided C.P. School, L. Rajupalem, Chimakurthi Mandal, Prakasam District, represented by its Correspondent Y. Sudhakar Suri.
9. S.V. Aided Primary School, Singarayakonda, Prakasam District, represented by its Correspondent Shaik Sattar Basha.
10. N.M.C. Aided Primary School, Ravivaripalem, Tangutur Mandal, Prakasam District, represented by its Correspondent D. Seetharamaiah.
11. G.M.D.C. Aided Primary School, Chejerla, Ongole (M), Prakasam District, represented by its Correspondent S. Dhanaraj.
12. Ravindrabharathi Aided U.P. School, Ramnagar, Addanki, Addanki (M), Prakasam District, represented by its Correspondent Thota China Madduleti.



13. J.V.N.A.A. U.P. School, Rajupalem, Martur Mandal, Prakasam District, represented by its Manager and Correspondent B. Elisha Babu.
14. A.A.A. Primary School, Pamidipadu, Korisapadu Mandal, Prakasam District, represented by its Manager R. Jeevaratnamma.
15. Aided Primary School, Ambedkar Nagar, Koppolu, Ongole Mandal, Prakasam District, represented by its Manager B. Vijayamma.
16. Sree Srinivasa Aided High School, Nehru Nagar, Cumbum, Prakasam District, represented by its Correspondent P. Lakshmi Devi.
17. A.B.M. Aided High School, Gopanipalli, Komarole (M), Prakasam District, represented by its Correspondent T. Vimalamma.
18. A.B.M. Aided Primary School, Gopanipalli, Komarole (M), Prakasam District, represented by its Correspondent T. Vimalamma.
19. Aided U.P. School, Ethamukkala, Kothapatnam (M), Prakasam District, represented by its Manager P. V. S. Uma Maheswara Rao.
20. Hindu Aided Elementary School, Pamidipadu, Korisapadu (M), Prakasam District, represented by its Secretary and Correspondent R. Seetharamarao.
21. Aided Elementary School, Uppugundururu, N.G. Padu (M), Prakasam District, represented by its Secretary and Correspondent S. Chinna Somaiah.
22. S.R.R. U.P. School, Ramakur, J. Pangalur Mandal, Prakasam District, represented by its Manager/Correspondent L. Srimannarayana.
23. P.V.S. Aided Elementary School, Pothavaram, N.G. Padu (M), Prakasam District, represented by its Manager and Correspondent P. Narasimhacharyulu.
24. Aided Elementary School, Chinna Nandipadu, Parchur (M), Prakasam District, represented by its Manager S. Chandra Sekhar Rao.
25. R.J.H. Aided Elementary School, Thimmasamudram, N.G. Padu Mandal, Prakasam District, represented by its Manager R. Sankaranarayana.
26. Hindu Aided Primary School, Cherukur, Parchur (M), Prakasam District, represented by its Correspondent K. V. L. Satyanarayana Sarma.
27. A.A. Elementary School, Dasarajupalli, Ongole Mandal, Prakasam District, represented by its Manager M. Prabhakar.
28. P.V.C. Aided Elementary School, Maddiralapadu, N.G. Padu Mandal, Prakasam District, represented by its Secretary/Correspondent V. Vijaya.
29. D.M.S.B.C. Girls High School, Yerragondapalem, Prakasam District, represented by its Correspondent M. David Raju.
30. S.V.V.S. A.P. School, Ramireddypalli, Donakonda (M), Prakasam District, represented by its Correspondent V. Krupamma.
31. Sri Vijaya Aided U.P. School, Jawharnagar Colony, Markapur (M), Prakasam District, represented by its Correspondent Ch. Vijaya Kumari.
32. S.U.M. Aided U.P. School, Manepalli, Pullacheruvu (M), Prakasam District, represented by its Secretary and Correspondent U. V. Ramana.

...PETITIONERS



AND

1. The State of Andhra Pradesh, Represented by its Principal Secretary, School Education Department, Secretariat, Velagapudi, Guntur District.
2. The Commissioner and Director of School, Education Andhra Pradesh, Ibrahimpatnam, Krishna District.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ or Order or Direction more particularly one in the nature of Writ of Mandamus declaring G.O.Ms. No. 43 School Education (P.S) Department dated 09.08.2018 issued by the first respondent, as illegal, arbitrary, unconstitutional, discriminatory and violative of Articles 14 and 16 of the Constitutions of India and consequentially set aside the same.

IA NO: 1 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend G.O.Ms. No. 43 School Education (P.S) Department dated 09.08.2018, pending disposal of the above writ petition.

Counsel for the Petitioners:SRI. P. V. S. S. S. RAMA RAO

Counsel for the Respondents: GP FOR SCHOOL EDUCATION

WP NO: 34160 OF 2018

Between:

Ravi Aided Upper Primary School, Allagada (Village and Mandal) Kurnool District, Andhra Pradesh Rep by its Correspondent Gadham Setti Venkata Subbaiah

...PETITIONER

AND

1. The State of Andhra Pradesh, rep by its Principal Secretary, School Education Department Secretariat, Velgapudi, Guntur District
2. The Commissioner and Director of School Education, Andhra Pradesh, Ibrahimpatnam, Krishna District

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an appropriate writ more in the nature of Writ of Mandamus declaring the GO Ms. No. 43 Dt. 09-08-2018 of the 1st Respondent, bringing amendments to Rule 12 of GO Ms NO. 1 Dated. 01-01-1994 in the matter of making appointments to the staff in private Aided institutions, as being arbitrary



and illegal and unconstitutional violating article 14 of the Constitution of India inasmuch as it takes away the rights of the managements in making appointments to the staff in the institution and confers the same on authorities and consequently set-aside the same conferring the right to administer the institutions by the managements and in the appointments of the institution, and issue such other Writ or Order or direction as deemed fit and proper in the circumstances of case.

IA NO: 1 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the GO Ms. No. 43, School Education PS Department, dated: 09-03-2018 at the interest of Justice.

Counsel for the Petitioner: SRI. M. SRI VIJAY

Counsel for the Respondents: GP FOR SCHOOL EDUCATION

WP NO: 34229 OF 2018

Between:

1. Hindu Aided Peta Committee Elementary School, Nandyala Kurnool District, Andhra Pradesh Rep by its Correspondent Kola Suresh Kumar
2. S.L.N. Partly Aided School Mandalur Village, Rudravaram Mandal Kurnool District Rep by its Correspondent T Srinivasulu

...PETITIONERS

AND

1. The State of Andhra Pradesh, rep by its Principal Secretary, School Education Department, Secretariat, Velgapudi, Guntur District
2. The Commissioner and Director of School Education, Andhra Pradesh, Ibrahimpattanam, Krishna District

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an appropriate writ more in the nature of Writ of Mandamus declaring the GO Ms. No. 43 Dt.09-08-2018 of the 1st Respondent, bringing amendments to Rule 12 of GO Ms NO. 1 Dated. 01-01-1994 in the matter of making appointments to the staff in private Aided institutions, as being arbitrary and illegal and unconstitutional violating article 14 of the Constitution of India inasmuch as it takes away the rights of the managements in making appointments to the staff in the institution and confers the same on authorities and consequently set-aside the same conferring the right to administer the institutions by the managements and in the appointments of the institution, and issue such other Writ or Order or direction as deemed an fit proper in the circumstances of case.

**IA NO: 1 OF 2018**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the GO Ms.No.43, School Education PS Department, dated. 09-08-2018 at the interest of Justice.

Counsel for the Petitioners:SRI. CH. SAMSON BABU

Counsel for the Respondents: GP FOR SCHOOL EDUCATION

WP NO: 35133 OF 2018

Between:

1. Vidyasagar Aided Upper Primary School, Viswanadhapuram, C.K. Dinne Mandal, Kadapa District-516004, Rep. by its Correspondent, William Krupakara Rao. V.J.
2. Vidya Niketan Aided Upper Primary School, Akkayapalli, Kadapa-516 000, Rep. by its Correspondent, B.Roshaiah .
3. Aided Upper Primary School, Balijapalli, C.K.Dinne Mandal, Kadapa Disdtrict-516004, Rep. by its Correspondent, M.Lakshmi Devi.
4. S.C.M.V.N.H. School, Prakash Nagar Colony, Kadapa, Rep. by its Secretary /Correspondent, P.Venkateshwara Rao.
5. Sri Rama Krishna High School, Kadapa, Rep. by its Correspondent, P.Krishna Murthy.

...PETITIONERS

AND

1. The State of Andhra Pradesh, represented by its Principal Secretary, School Education Department, Secretariat, Velagapudi, Guntur District.
2. The Commissioner and Director of School Education, Andhra Pradesh, Ibrahimpatnam, Krishna District.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ or Order or Direction more particularly one in the nature of Writ of Mandamus declaring G.O.Ms. No. 43 School Education (P.S) Department dated 09.08.2018 issued by the first respondent, as illegal, arbitrary, unconstitutional, discriminatory and violative of Articles 14 and 16 of the Constitutions of India and consequentially set aside the same.

**IA NO: 1 OF 2018**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend G.O.Ms. No.43 School Education (P.S) Department dated 09.08.2018, pending disposal of the above writ petition.

Counsel for the Petitioners:SRI. T. V. S. KUMAR

Counsel for the Respondents: GP FOR SCHOOL EDUCATION

WP NO: 37838 OF 2018

Between:

Aided Elementary School, Leguntapadu, Kovvur Mandal, SPSR Nellore District-524137, Rep. by its Manager, S.Pavana Kumar, S/o Seshi Reddy.

...PETITIONER

AND

1. The State of Andhra Pradesh, Represented by its Principal Secretary, School Education Department, Secretariat, Velagapudi, Guntur District.
2. The Commissioner and Director of School Education Andhra Pradesh, Ibrahimpatnam, Krishna District.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ or Order or Direction more particularly one in the nature of Writ of Mandamus declaring G.O.Ms. No. 43 School Education (P.S) Department dated 09.08.2018 issued by the first respondent, as illegal, arbitrary, unconstitutional, discriminatory and violative of Articles 14 and 16 of the Constitutions of India and consequentially set aside the same.

IA NO: 1 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend G.O.Ms. No. 43 School Education (P.S) Department dated 09.08.2018, pending disposal of the above writ petition.

Counsel for the Petitioner:SRI. T. V. S. KUMAR

Counsel for the Respondents: GP FOR SCHOOL EDUCATION

**WRIT PETITION NO: 43104 OF 2018****Between:**

1. Guntur District Aided Schools Management Association, Guntur, Represented by its Secretary, Sri Bhatraju Chittaranjan Das, S/o. Late B.Krishna Murthy, aged 74 years, R/o. Pakanati Estates, Flat No.405, Chakalibhavi Centre, Etukuru Road, Guntur 522 003.
2. The Aided Primary School, Pittupalem, Rep. by its Manager, Sri Didla Venkata Veera Reddy, S/o. D. Krishna Murthy Reddy, aged 49 years, Cherukupalli Mandal, Guntur District.

...PETITIONERS**AND**

1. The State of Andhra Pradesh, Rep. by its Special Chief Secretary to the Government, School Education, Secretariat, Velagapudi, Amaravathi, Guntur District.
2. The State of Andhra Pradesh, Rep. by its Principal Secretary to Government, School Education, Secretariat, Velagapudi, Amaravathi, Guntur District.
3. The Commissioner of School Education, Government of Andhra Pradesh, 24-125, Vijayawada, Mylavaram Road, Bhimarajugutta, Ibrahimpatnam, Krishna District 521 456.
4. The Regional Joint Director of School Education, Guntur, Guntur District.
5. The District Educational Officer, Guntur, Guntur District

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ, Order or direction more particularly one in the nature of Writ of mandamus declaring the G.O.Ms.No.43 dated 09.08.2018 as illegal and in contravention of Education Act, 1982 and also in violation of Articles 14, 15 and 29 of Constitution, consequently set aside the G.O.Ms.No.43 dated 09.08.2018 by directing the respondents to permit the petitioner schools to fill the aided teaching and non-teaching posts.

IA NO: 1 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the G.O.Ms.No.43 dated 09.08.2018 pending disposal of the above writ petition.

Counsel for the Petitioners: SRI. N. SUBBA RAO**Counsel for the Respondents: GP FOR EDUCATION**

**WP NO: 45079 OF 2018****Between:**

1. Lutheran Aided Primary School, Gondolu Village, Addattegala Mandal, E.G.District.
 2. Lutheran Aided Primary School, G.V.Palem Village, Addattegala Mandal, E.G.District.
 3. Lutheran Aided Primary School, Thimmapuram Village, Addattegala Mandal, E.G.District.
 4. Lutheran Aided Primary School, Vattigadda Village, Rajavommangi Mandal, E.G.District.
 5. Lutheran Aided Primary School, Jaddangi Village, Rajavommangi Mandal, E.G.District.
 6. Lutheran Aided Primary School, Labbarthi Village, Rajavommangi Mandal, E.G.District.
 7. Lutheran Aided Primary School, Ch.Nellipudi Village, Gangavaram Mandal, E.G.District.
 8. Lutheran Aided Primary School, P.Nellipudi Village, Gangavaram Mandal, E.G.District.
 9. Lutheran Aided Primary School, P.Gangavaram Village, Gangavaram Mandal, E.G.District.
 10. Lutheran Aided Primary School, Chavitidibbalu Village Y.Ramavaram Mandal, E.G.District.
 11. Lutheran Aided Primary School, Indukurupeta Village Devipatnam Mandal, E.G.District.
 12. Lutheran Aided Primary School, Kunjamveedi Village Rampachodavaram Mandal, E.G.District.
 13. Lutheran Aided Primary School, R.Chodavaram Village Rampachodavaram Mandal, E.G.District
- (for all the above schools are rep. by its Correspondent
M.Samsundaram, S/o M.Sudarshanam, aged 74 years,
R/o Lalithanagar, Rajahmahendravaram, East Godavari District)

...PETITIONERS**AND**

1. The State of Andhra Pradesh, rep. by its Principal Secretary School Education Department, Secretariat, Velagapudi, Guntur District.
2. The Commissioner and Director of School Education, A.P. Vijayawada Krishna District.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ, order or direction more particularly one in the nature of Mandamus declaring the impugned G.O.Ms.No.43 School Education Department, dated 09-08-2018 of the 1st respondent bringing as substitute to Rule 12 of G.O.Ms.No.1 Education (PS.2) Department, dated 01-01-1994, in respect of filling up the posts in Aided Institutions, as being arbitrary and illegal and un-constitutional violating Article 14 and 30(1) of the Constitution of India inasmuch as it takes away the rights of the managements in making appointments to the staff in the educational institutions and confers the same



on authorities and consequently set aside the same G.O.Ms.No.43 School Education Department, dated 09-08-2018.

IA NO: 1 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the G.O.Ms.No.43 School Education Department, dated 09-08-2018 issued by the 1st respondent pending disposal of the above writ petition.

Counsel for the Petitioners:SRI. M. R. TAGORE

Counsel for the Respondents: GP FOR SCHOOL EDUCATION

WP NO: 45521 OF 2018

Between:

1. C.K. High School Committee, Rep. by its Secretary and Correspondent, Sri P. Adi Sudarshana Sundara Rao, S/o. Anjaiah, Aged 78 years, R/o. Mangalagiri, Guntur District
2. Ramakrishna Hindu High School, Rep by its Correspondent, Sri Mallela Srinath Chowdhary, S/o. Seshagiri Rao, aged 85 years, Amaravathi (Temple), Guntur District

...PETITIONERS

AND

1. The State of A.P, Rep by its Special Chief Secretary to the Government, Secretariat, Velagapudi, Amaravathi, Guntur District.
2. The State of A.P, Rep by its Principal Secretary, School Education, Secretariat, Velagapudi, Amaravathi, Guntur District.
3. The Commissioner, School Education, Government of Andhra Pradesh, 24-125, Vijayawada - Mylavaram Road, Bhimaraju Gutta, Ibrahimpatnam, Krishna District - 521 456.
4. The Regional Joint Director of School Education, Guntur, Guntur District.
5. The District Educational Officer, Collectorate Compound, Guntur District at Guntur.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ or order one particularly in the nature of Writ of Mandamus declaring the G.O.Ms.No.43 dated 09.08.2018 amending the A.P. Educational Institutions (Establishment, Recognition, Administration and Control of Schools under Private Management) Rules, 1993, in particular amending Rule 12 omitting Rule 13 as illegal and in conflict with the provisions of the A.P. Education Act, 1982, consequently direct the respondents to permit the petitioner schools to fill the vacant aided posts in accordance with the Rule 12 of the amended rules framed under G.O.Ms.No.1 dated 01.01.1994.

IA NO: 1 OF 2018



Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the G.O.Ms.No. 43, dated 9-8-2018, pending disposal of the Writ Petition.

IA NO: 2 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the respondents to permit the petitioners to fill the vacant aided posts, pending disposal of the Writ Petition

Counsel for the Petitioners:SRI. N. SUBBA RAO

Counsel for the Respondent No. 1: GP FOR GENERAL ADMINISTRATION

Counsel for the Respondent Nos. 2 to 5: GP FOR EDUCATION

WP NO: 32808 OF 2018

Between:

1. Sri Raghava Reddy Memorial Aided School Committee, S.A.R.R.M. High School, Vital Nagar, Perala Chirala Prakasam District. Represented by the Secretary and Correspondent A.G. Gopala Krishna Reddy.
2. Batta Veeranna and Beeraka Nagaiah Secondary School Committee, B.V. and B.N. High School, Jandrapeta, Chirala, Prakasam Dt. Represented by its Secretary and Correspondent B.Beeraka Krishna Prasad
3. Patibandla Srremannarayan Chowdary High School, Committee Patibanda S.ernannarayana Chowdary Committee High School, muppavaram J.Panguluru MD Prakasam Dt.represented by its Secretary and Correspondent Kodali Uma Venkata Subba Rao,
4. Pranthiya Vidya Parishad, S.K.V.S. High School, Pusapedu, Inkollu MD Prakasam District represented by its Secretary and Correspondent G.L.K Prasad
5. Sowjanya Educational Society, M.S.High School, Rama Krishnapuram Chirala MD, Prakasam District, represented by its Secretary and Correspondent Ch. Baparthnam.
6. Sri Navya Bhaaratha Pradamika Vidya Sangham, S.N.B.G.B.P. High School, Veeranna Palem, Parchur MD, Prakasam Dist, rep. by its Secretary and Correspondent Y. Seetha Ramaiah.
7. Neelam James Medical and Educational Society, N.J.A. Primary and High School, Bose Nagar, Chirala Md, Prakasam District. Represented by its Secretary and Correspondent N.Samuel Moses.
8. Geethacharya Educational Society, S.V.P.A.U.P. School, Vykuntapuram, Chirala Md, Prakasam District represented by its Secretary and Correspondent V.Prabhakara Rao
9. Priyadarshini Vidyabhivruddhi Samstha, P.V. U.S.O.A.U.P.School, Hariprasad Nagar, Chirala Md, Prakasam District, represented by its Secretary and Correspondent G. Seshadri Reddy.
10. Siva Danam Kotilingam Educational Society S.K.A.U.P. School, Palha Chirala MD, Prakasam Dist rep by its Secretary and Correspondent S.Sankar Babu



11. David Educational Society, A.A.Aided Primary School, Peddivaripalam, Parchur Md, rep. by its Secretary and Correspondent S Vivekavathi.
12. Lingala Samuel Memorial L.S.M.Aided Primary School, Jayasankar Nagar, Chirala Md, Prakasam Dt. Represented by its Secretary and Correspondent Telagathoti Ankaiah.
13. Aided Elementary School, Vetapaiem MD, Prakasam Dt. Rep. by its Secretary and Correspondent S.Satyanandam
14. P.V.R.A.U.P.School, Dwarakapadu Dwaraka pad, Valaparla (PO), Prakasam Dt. Rep. by its Secretary and Correspondent Ramanatham.
15. Parankusam Venkata Sesha Charyulu Educational Society, P.V.S.Aided Elementary School, Pothavaram, Naguluppalapadu Md rep. by its Secretary and Correspondent P. Narasimha Charyulu
16. Sri Venkateswara Educational Society, Hindu Aided U.P. School, Kottapalli, Prakasam Dt. Rep. by its Secretary and Correspondent K. Picchi Reddy
17. Saint Shalem Educational Society, ST.Shalem U.P. School, Giddaluru, Prakasam Dt. Rep. by its Secretary and Correspondent P.Victor Paul
18. Sri Bhramaramba Educational Society, Shri Bhramaramba Aided High School, Kambum, Prakasam Dt, Rep. by its Secretary and Correspondent K. Jayalakshmi Devi.
19. S.L.V. Educational Society, S.B.N.R.M. group of Aided Primary and High Schools, Kottapalle, Komorolu, Komorolu Mandal rep. by its Secretary and Correspondent B. Narayana Reddy
20. G.S.S.T School Committee, G.S.S.T. Aided Primary and High School, Karedy, Prakasam dt. Rep. by its Secretary and Cornsponcent E. Rajeswari.
21. Sri Sarada Vidya Mandir, Sri Sarada Vidya Mandir Aided U.P. School, Thurimalla, Cumbum Mandal, Prakasam Dist, Rep by its Correspondent, P.Mahesh Kumar.
22. Sri Vivekananda Vidya Oriental Aided High School, Ongole, Prakasam Dist, Rep. by its Secretary and Correspondent T.Prasada Rao
23. Sri Srinivasa Aided UP School, Electric Colony, Cumbum, Praksam Dist. Rep. by its Secretary and Correspondent L. Sridevi.
24. The True Saviour Missionary Society, A.M.Aided Primary School, Bethelapuram, Donakonda Mandal, Prakasam Dist. Rep. by its Secretary and Correspondent MIV.Prasad
25. Rural Educational Development Society Aided High School, And Rural Educational Society Aided Primary School, Nallaguntla, Prakasam Dist. Rep. by its Secretary and Correpondent K. Prem Kumar
26. Sri Srinivasa Educational Society, SMS Oriental primary and High School, Uyyalapalli, Nellore dist. Rep by its secretary and Correspondent V. Srinivasa Reddy
27. Nethaji Memorial Educational Society, and Sree Sarada Vidya Nilayam Elementary School, Ayodhya Nagar, Vijayawada-3, Krishna Dist rep. by its Secretary and Correspondent K.Srinivas (Also the President of Private Recognised Aided Schools Managements Association of Andhra Pradesh)
28. Sri Vijayawada Gujarathi Samaj, L.P.C.T. Gujarathi Vidyalaya E.M. High School, and Sri Vijayawada Gujarathi Samaj, L.P.C.T. Gujarathi Vidyalaya E.M. Primary School, Vijayawada-1, Krishna Dist., Rep by its Secretary and Correspondent, Piyush J. Seth
29. ST.BVD TRUST S.T.B.E.M. High School, Bhavannarayana Street, Vijayawada, And S.T.B.E.M. Primary School, Bhavannarayana Street, Vijayawada, Krishna District, represented by its Secretary and Correspondent T. Jaya Rama Prasad.
30. Vijayawada Iron and Hardware Merchant Association, Jai Kisan Steel Company EM High School, and Jai Kishan Steel Company Elementary High School, Main Bazar, Vijayawada. Krishna Dist., Rep by its Secretary and Correspondent K.V Seshavatharam



31. Rajasthan Association, and R.S.M.R.H.V.E.M. UP School, Arjun Street, Vijayawada, Krishna District, rep by its Secretary and Correspondent Bai Kishan Loya
32. Sri Telaprolu Raja Vidya Dharmanidhi Trust, Sri Telaprolu Raja High School, Vijayawad, Krishna district, rep by its Secretary and Correspondent T. Rupeswara Guptha
33. M.T.M.Sthree Vidyabhi Vriddhini Sangam, George Coronation High School and George Coronation Elementary School, Javar Pet, Machilpatnam, Krishna District, Rep by its Secretary and Correspondent V. Subba Rao
34. Nandigama Church of Christ Educational Society, V.V.N.U.P. school, Raithupet, Nandigama, Krishna Dt. Rep. by its Secretary and Correspondent P. Deva Sahayam
35. Adhi Andhra Educational Society, A.A.P. School, Nandigama, Krishna District rep. by its Secretary and Correspondent P. Joshi Beulah.
36. Aided U.P. School, Nizampet, Machilipatnam, Krishna Dt. Rep by its Secretary and Correspondent D.V.Subba Rao
37. Sri Munnamgi Jayapaul Minority Christian Educational Society, Sri Munnamgi Jayapaul Minority Christian Elementary School, Ranigari thota Krishna lanka, Vijayawada, Krishna District rep by its Secretary and Correspondent M. John Mohan
38. Lazarus Memorial Educational Society, P.L.K. Aided T.M. HIGH School, Velama Gudem, Palakollu West Godavari Dist. Rep by its Secretary and Correspondent, B. Mercy Bai
39. H.S.P.V.S.Society, V.D.H.S.P.V.S.S.S.Girls High School, Roypet, Narasapuram, West Godavari District rep. by its Secretary and Correspondent N.Venkata Narayana Rao
40. Remnant Church of God Hebron Residential High School, Nagarajupet, Palakollu, West Godavari Dist. Rep. by its Secretary and Correspondent J. Sagar.
41. Lazarus Memorial Educational Society, B.E.M. Aided T.M. High School, Municipal Colony, Rajahmundry East Godavari Dt. Rep by its Secretary and Correspondent, B. Mercy Bai
42. Sri Victoria Management Committee School, Sri Victoria Aided U.P. School, Rangrigepet, Rajahmundry, East Godavari, Rep by its Secretary and Correspondent P. Chandra Kumar
43. Sri Korpu Thammayya Residential UP School Society, Sri Korpu Thammayya residential UP School, Korukonda, East Godavari dist rep by its Secretary and Correspondent G.SuryaBhaskara Rao
44. Hindhu Aided Elementary School, Gangampalem. East Godavari, rep by its Secretary and Correspondent A.V.Chalapathi Rao Gangam Palem East Godavari
45. Balavignan Samithi B.V.M.E.M aided High School, Srirama Nagar, Rajahmundry, East Godavari district rep. by its Secretary and Correspondent Ch.Uday Shankar.
46. Educational Society B.S.S.S.B.T.M.Aided High School, And Educational Society B.S.S.S.B.E.M,Aided High School, Gorakshanapet, Rajahmundry East Godavari Dist., Rep. by its Secretary and Correspondent Guna Ranjan
47. Yadava High School Committee, Yadava High School, Old Guntur rep. by its Secretary and Correspondent M. Anjaiah
48. T.M.Rao High School Management Committee, T.M.Rao High School, Battiprolu, Guntur Dist, rep. by its Secretary and Correspondent P. Mallikarjuna Rao
49. V.P.and G.S.M. High School Management Committee, V.P. and GSM High School, Surepalli Guntur Dist., Rep by its Secretary and Correspondent R. Ramana Rao
50. Sri Dhulipudi Vidya Sangham T.B. High School, Dhulipudi, Guntur, Rep by its secretary and Correspondent T. Kodandapani Guptha



51. The Batthula Ramanappa Middle High School Committee, BRC High School, Ameenabad, Rep by its Secretary and Correspondent B.V. Ramana
52. Sri Saraswathi Committee School S.S.C.A.UP, School Guntur Dist., Rep by its Secretary and Correspondent, D.V. Subba Rao
53. Yanadhi Educational Society, R.A.U.P. School, Guntur Dist., Rep. by its Secretary and Correspondent, T.R.Jaya Chandar
54. S.R.N.T.C. Hinahu Elementary School S.R.N.T.C., Hindhu UP School Guntur Dist., Rep by its secretary and Correspondent, G. Yugandhar.
55. Karasani Anjireddy Educational Society H.A.U.P. School, Old Guntur, Rep. by its Secretary and Correspondent M.Rajani
56. Sri Kodanda Ramaseva Samajam Sri Pottisriramulu Aided Elementary school, Guntur dt rep by its Secretary and Correspondent V. Rama Devi.
57. S.V.N.A. High School, Chatragadda, Guntur Dt. Rep by its Secretary and Correspondent M.Subba Rao
58. Jai.Hindh U.P. School Peddapalli, Guntur Dist. Rep by its Secretary and Correspondent V.V.Koteswara Rao.
59. S.A.U.P. School, Pudivada Guntur Dist. Rep by its Secretary and Correspondent Y. Syama Sundaram
60. N.A.U.P. School, Repalle Guntur Dt. Rep by its Secretary and Correspondent D.Ramakrishna
61. Aided U.P School, Pecamatlapudi, Guntur dt. Rep by its Secretary and Correspondent G.L. Vasantha Kumari
62. Aided Hindu Elementary School, Ponnuru Guntur Dist rep by its Secretary and Correspondent Sai Vijay Kumar.
63. Aided Hindu Elementary School, Ganesha Pirangipuram Guntur Dt. Represented by its Secretary and Correspondent B. Fathi Raju.

...PETITIONERS**AND**

1. The State of Andhra Pradesh, Special Chief Secretary to the Government, Education Dept., Secretariat, Velagapudi, Amaravati, Guntur District.
2. The State of Andhra Pradesh, Rep. by its Principal Secretary, Dept. of School Education, Secretariat, Velagapudi, Amaravati, Guntur District
3. The Commissioner of School Education Government of Andhra Pradesh, 24-125, Vijayawada- Mylavaram Road, Bhimaraju Gutta, Ibrahimpatnam, Krishna District- 521 456.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ, Order or Direction, more particularly one in the nature of a Writ of Mandamus declaring G.O.Ms. No. 43 School Education (PS) Department dated 09.08.2018 issued by the Respondents where under Rule 12 of G.O.Ms.No.1 dated 01.01.1994 of Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and control of Schools under Private Management) Rules, 1993 was amended and Rule 13 has been omitted taking away the right of the managements of the Petitioner Institutes to make appointments to the vacant posts in the Aided institutions and entrusting the same to the Government officials as being illegal, arbitrary and in violation of Article 14 and Article 21 of the Constitution of India and also in conflict and violation of the provisions of the AP Education Act, 1982 and rights guaranteed thereunder and also in violation of the Judgments of the Hon'ble Supreme Court and consequently set aside the same directing the Respondents to



permit the Petitioners to fill-up vacant aided posts in accordance with rules framed under G.O.Ms.No.1 dated 01.10.1994.

IA NO: 1 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend G.O.Ms. No. 43 School Education (PS) Department dated 09.08.2018.

Counsel for the Petitioners:SRI. N. ASHWANI KUMAR

Counsel for the Respondents: GP FOR EDUCATION

The Court made the following: COMMON ORDER





**THE HON'BLE THE ACTING CHIEF JUSTICE C. PRAVEEN KUMAR
AND**

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

**WRIT PETITION Nos.28912, 28924, 29026, 29470, 30456, 32262,
32315, 32337, 33200, 33421, 33478, 34160, 34229, 35133,
37838, 43104, 45079, 45521 AND 32808 OF 2018**

COMMON ORDER: *(Per Hon'ble Sri Justice M. Satyanarayana Murthy)*

All these writ petitions are filed under Article 226 of the Constitution of India, by various minority educational institutions, challenging G.O.Ms.No.43 School Education (PS) Department dated 09.08.2018 issued by the first respondent, bringing amendment to Rule 12 of G.O.Ms.No.1 Education (PS.2) Department dated 01.01.1994 in the matter of making appointments to the staff in private aided and unaided educational institutions as illegal, arbitrary, unconstitutional and violative of Article 14 and 30(1) of the Constitution of India, as it takes away the rights of managements in making appointments to teaching and non-teaching staff in the institutions and confers the same on authorities, and consequently set-aside the same conferring the right to administer the institutions by the managements and in the appointments of the institutions.

Since, the question involved in all these writ petitions is identical, except in W.P.Nos.45521, 43104 & 30456 of 2018 filed by Sri N. Subba Rao, counsel for the petitioners, where the petitioners raised an additional ground that, amendment to G.O.Ms.No.43 School Education (PS) Department dated 09.08.2018 issued by the first respondent amending Rule 12 of G.O.Ms.No.1 Education (PS.2) Department dated 01.01.1994 is not in accordance with the procedure prescribed under Section 99(3) of A.P Education Act, since the amendment was not placed before both the houses and thereby, it



is contrary to the provisions and rules under the A.P. Education Act. Therefore, the allegations made in W.P.No.28952 of 2018 are taken into consideration, which are more comprehensive as leading petition, besides the allegation with regard to violation of procedure in bringing the amendment raised in W.P.Nos.45521, 43104 & 30456 of 2018 filed by Sri N. Subba Rao, counsel for the petitioners.

In all these writ petitions, the petitioners are educational institutions are recognized by the Government of Andhra Pradesh and partly aided and has been catering to the educational needs of State for the last many decades, working specially among the minorities and downtrodden communities of the society, maintaining high standards of education and achieving 100% results in public examinations. These institutions are governed by the provisions of A.P. Education Act and the rules framed thereunder from time to time. All the petitioners/educational institutions are recognized as minority institutions. It is stated that, A.P. Education Act came into force in the year 1982 as per the provision of Section 99 of the A.P. Education Act; Government reserved the powers to make rules for carrying out the purpose of the Act and sub-section (xi); the Rules were to be made for establishment, maintenance and administration of the educational institutions. However, the rules so framed invoking the powers under Section 99 cannot be inconsistent with the provisions of the Education Act and Article 30(1) of the Constitution of India. It is submitted that, in the year 1993, the Government issued comprehensive rules for the administration of private educational institutions vide G.O.Ms.No.1 Education (PS.2) Department dated 01.01.1994 known as Andhra Pradesh Educational Institutions



(Establishment Recognition, Administration and Control of Schools under Private Managements) Rules, 1993 (for short 'Rules').

Rule 12 of the above mentioned Rules deals with appointment of staff, while Rule 13 deals with constitution of Staff Selection Committee. Through the impugned G.O, the first respondent has omitted Section 13 while drastically amending the provisions of Rule 12 in relation to the appointment of staff in private minority educational institutions.

The petitioners being minority educational institutions, are managing the institutions, including recruitment of teaching and non-teaching staff for the institutions following the procedure i.e. by issuing notifications, calling for applications in two newspapers after obtaining clearance certificate from the competent authority that there are no surplus posts in the district and Staff Selection Committee is to be constituted under Rule 13 having the nominee of the competent authority and taking the assistance of subject experts, following roaster and reservations for SCs/STs. However, as per Sub-Rule (7), the Educational Agency shall be free to make appointments of employees into the unaided posts. After the appointments were made by the management for either the aided or unaided posts, the educational agency shall obtain the ratification from the competent authority. Further the management was free to make appointments of the staff on temporary basis without reference either to the prior approval or subsequent ratification of the competent authority. The petitioners are strictly adhering to Rule 12 and making appointments in the institutions, as it was left with the management and it will only by nominating a person to oversee the



selection process by State and the selection is subject to approval by the competent authority.

As per the provisions of the A.P. Education Act, appointments shall be made by the Educational Agency and when the appointment was made following the rules, grant-in-aid is to be released by the Government in respect of such appointments, either for teaching or non-teaching staff.

It is submitted that the right of the managements of a Minority Educational Institution would flow from the constitutional provisions under Article 30(1). The right to make appointments, deal with the appointed staff, selecting a candidate of their choice for appointment, is under the exclusive domain of the management. The educational authorities cannot interfere with such a prerogative except in the event that the staff so appointed does not possess the qualifications to hold the post or such appointment is forbidden under the law of the land. If any enactment or rules empowering the administration are taking away the right guaranteed to the management of a minority institution, it would be unconstitutional and therefore the same is liable to be struck down.

It is submitted that the Apex Court upheld the exclusive rights of minority educational institutions, under the protective umbrella of Article 30(1). Therefore, the Rules framed by the Government would take away the right of the institutions and would amount to infringing the right of minority educational institutions guaranteed under Article 30(1) and when the rule is inconsistent with the constitution, the same is liable to be struck down.



As per amended Rule 12 of the Rules, the right to administer the institution through making appointments to the staff by the management is totally abridged. The core provisions of the A.P. Education Act upheld the rights of the management to administer the institution and it has conferred the rights on the authorities only to check the mismanagement and take remedial measures. It never envisaged that the power conferred on the management be usurped by the competent authority. But, Rule 12 is amended contrary to the spirit of Article 30(1), which will be discussed later.

It is submitted that, from the amended provisions, it is clear that the rights of the managements from making appointments is taken away and conferred on the Commissioner of School Education as per the schedule fixed by him. No doubt, the intention is to bring Excellency in educational standards by selecting more qualified into the institutions, cannot be found fault with and the same can be insisted from the management and as could be seen that as per the existing policy, entire selection process is done in the presence of the nominee of the competent authority and the selection that is made is also subject to approval. In such an event, any prescription that can be made to bring Excellency in educational standards cannot go to the extent of abridging the rights of the minority managements in making appointments into their institutions, since such a right accrues to them under the provisions of Article 30(1) of the Constitution. Therefore, amendment to Rule 12 of the Rules which is brought under the impugned G.O is contrary to the purport of Article 30(1) of the Constitution of India. In an identical situation, High Court of Judicature at Hyderabad in **Modern High School, Zamisthanpur,**



Musheerabad, Hyderabad v. Government of Andhra Pradesh¹ dealt exhaustively when Rule 12 was sought to be amended earlier to take away the rights of private managements in making appointments vide G.O.Ms.No.76 dated 02.11.1999, wherein the Division Bench struck down the same as being unconstitutional. Despite striking the G.O, the first respondent again repeated the same mistake, hence, the impugned G.O is liable to be struck down, and prayed to allow the writ petitions.

The first respondent filed detailed counter on behalf of the Education Department, denying the material allegations, while admitting about amendment to Rule 12 by issuing G.O.Ms.No.43 School Education (PS) Department dated 09.08.2018 and omitting Rule 13.

The specific contention of the respondent is that, Education is a state subject under Entry 25 list and as per the provisions of the A.P. Education Act, 1982 (as amended by Act 27 of 1982) under Section 78, Government has no power to make rules to regulate the methods of recruitment and also to continue any officer or teacher into an educational service and also empowered to make rules without prejudice to the generality of foregoing power. Accordingly, the State Government has prescribed method of recruitment, conditions of services. However, Rule 12 of G.O.Ms.No.1 Education (PS.2) Department dated 01.01.1994 is not silent on selection process of teaching and non-teaching staff, as envisaged in Rule 12(1), (2) and (3) of the Rules. Hence, under Article 21-A of the Constitution of India, the State is under a constitutional obligation and according to it, the State shall provide free and compulsory education to all the

¹ (2002) 5 ALT 96 (DB)



children of the age 6 to 14 years, in such manner as the state may by law determine. Further, Article 45 of the Constitution of India declares that the state shall endeavour to provide early childhood, care and education to all the children until they complete the age of 6 years. Further, the Right of Children to Free and Compulsory Education Act, 2009, also mandates giving compulsory education upto the age of 14 years to give compulsory education. The said Acts mandates that the government shall provide and ensure good quality elementary education. Section 26 of the Right to Education Act, 2009, mandates that schools established, owned, controlled are substantially financed from the funds provided by the government and shall ensure that vacancy of the teachers in the school shall not exceed 10% of the total sanctioned strength.

It is contended that, after disposal of various writ petitions/writ appeals before the High Court and SLPs before the Supreme Court, Government issued Memo No.18836/PS/A2/2010-34 dated 30.06.2017 according permission to the private institutions/managements for filling up the aided posts. As such, private managements without adhering to the Rules in vogue and in utter violation of the Rules, absorbed certain teachers, non-teaching staff by back door methods, which resulted in unhealthy practice in the private aided schools. However, it is urged that amendment to Rule 12 by G.O.Ms.No.43 School Education (PS) Department dated 09.08.2018 is only to regulate the recruitment in private educational institutions, but not to take away the power of the minority educational institutions to recruit teaching and non-teaching staff or to take away the management and administration of the minority institutions which is a fundamental right guaranteed under Article



30(1) of the Constitution of India. Further, it is contended that, the Government amended Rule 12 only to regulate the procedure and to bring meritorious qualified teachers into the minority educational institutions to impart good qualitative education to the teachers. It is further contended that, the government is only appointing teachers, whereas, the overall control of the management, administration, disciplinary action on the teachers still vest with the minority institution. The State Government wanted to ensure uniform standards in teachers throughout the states. Therefore, there is reasonable nexus to the object sought to be achieved i.e. only to ensure that proper teachers are selected in the interest of the students and this cannot be said to be interference with the management of the minority institutions. If, highly qualified teachers are selected, learning capacity of the children will be increased on account of selecting the best teachers among the candidates appearing for the posts. Therefore, amendment to Rule 12 cannot be said to be interference with the management or administration of the minority educational institutions.

It is further contended that, as per amended Rule 12, the Government issued state wide notifications for appointment of teachers, which includes teachers belonging to minority community also and this will ensure timely filling up of the vacancies and there will be uniformity throughout the State. This step will address major malpractice i.e. after lifting of ban, respondents have received several complaints stating that appointment or promotion of teachers was taken up by backdoor method wherein the teachers are not up to the mark. This being a serious problem, prompted the Government to take care of the selection process by amending Rule 12 and that the



proposed amendment to Rule 12 is rational, legal and constitutional. Therefore, the same cannot be said to be violative of Article 30(1) of the Constitution of India.

While denying the contentions of the petitioners/ minority educational institutions that amendment to Rule 12 vide G.O.Ms.No.43 School Education (PS) Department dated 09.08.2018 abrogated the rights of the minority educational institutions, it is strongly contended that by issuing G.O. it is made clear that the present existing merit roster based recruitment system shall continue. It is further declared that the same is not applicable to minority educational institutions, if they are selecting candidate belonging to the concerned minority community and that by issuing G.O., the rights of minority educational institutions were infringed and it is in violation of Article 30(1) of the Constitution of India.

It is specifically contended that the petitioners failed to give details of declaration of minority educational institutions, and just because, they named the institutions as minority educational institutions, one cannot confer the privileges, immunities available to the minority institutions. It is pleaded that before they claim rights, the immunities under the garb of minority institutions, such institutions are obligated to produce certificate issued by the concerned authorities, thereby, the petitioners are not entitled to claim any relief in these writ petitions.

Further, though Rule 12 is amended, the procedure is limited or confined to recruitment of teachers for better achievements by the minority institutions and it will not take away the management, administration and control over the educational institutions and it was never the intention of the State Government, thereby, the



apprehension of these petitioners/minority educational institutions is without any basis. The respondents further contended that the State issued G.O.Ms.No.1 Minorities Welfare (M&R) Department dated 16.01.2004 framing certain guidelines for issuing Minority Status Certificate for making admissions and appointments in Minority Educational Institutions. As per Guideline No. I(5), the educational institutions established and managed by the minorities shall serve the educational needs of their community to which they claim by filling up not less than 70% of seats being filled up by the Managements as per the rules governing admission into various colleges with the candidates belonging to the respective minority community. This Court called for report from the education department as to such educational institutions which is tabulated as under:

Sl.No	Case No	Name of the petitioner	Whether school has minority certificate	Total no. of students	No of minority students
1)	W.P.No.28924/2018	Sri Vyasasramam, yerpedu, Chittoor District	NA	216	0
2)	W.P.No.29026/2018	Convention of Baptist Churches of the Norther Circars (CBCNC)	No	62	0
3)		AFDT High School	NA	274	0
4)		Gnaniketan EM & TM Aided School	NA	1233	NA
5)		Kasturidevi Girls High School	NA	230	NA
6)		Guild of Service Aided Schools	NA	204	NA
7)		W.P.No.28912/2018	Ester Axene res. High School	Minority	341
8)	Ester axene res. Elementary school		Minority	211	5
9)	Nehru Aided Group of Schools		Minority	410	0
10)	M.N.M. High School		NA	110	0
11)	Tabitha Idea Aided High School		Minority	138	0
12)	S.R.H Aided elementary school		NA	22	0
13)	Smt. K.K.V.M. Elementary school		NA	54	0
14)	S.V.K.P. & S.K.V.R Girls High School		NA	179	0
15)	DVPRA UP school		NA	228	1



16		Vignana Pradayini A.U.P School (E.M)	NA	168	0
17		Powers aided U.P. School	NA	189	0
18		K.P.D.T. High School	NA	633	0
19		S.V.V Hindu Aided Elementary School	NA	25	0
20		CGM Aided Primary School		77	0
21	W.P.No.30456/2018	Chenchu Aided Upper Primary School	NA	NA	0
22		Patibandla Sitaramaiah High School	NA	NA	0
23		S.K.D.V.S High School	NA	NA	0
24		S.V.S.C High School	NA	NA	0
25		Dr. B.R. Ambedkar Aided Elementary School	NA	NA	0
26	W.P.No.30456/2018	Hindu Aided Upper Primary School	NA	NA	0
27		Aided Hindu Elementary School	NA	NA	0
28		A.B. Primary High School	NA	NA	0
29		I.B.H.A.U.P School	NA	NA	0
30		S.M.V.P School	NA	NA	0
31		Hindu Aided Primary School	NA	NA	0
32		Sri Ganesh Committee Aided Elementary School	NA	NA	0
33		Sri Sitarama Vidyalayam	NA	NA	0
34		Harijana Aided Elementary School	NA	NA	0
35		S.T.U.P School	NA	NA	0
36		Aided Elementary School	NA	NA	0
37		S.R.T.A Primary School	NA	NA	0
38		S.S.H.A primary School	NA	NA	0
39		Aided Hindu Elementary School	NA	NA	0
40		Aided Upper Primary School (MV)	NA	NA	0
41		Aided Elementary School	NA	NA	0
42		Hindu Aided Elementary School	NA	NA	0
43		N.M.R.A.U.P School	NA	NA	0

It is also brought to the notice of this Court that minority students were not admitted in the petitioners/educational institutions in W.P.Nos.28912, 29026 and 28924 of 2018, according to the



governing rules, as such, they are not entitled to claim Minority Status. Therefore, the petitioners in the above three writ petitions are not minority institutions and no certificate was issued to them. It is further contended that, as per the guidelines in G.O.Ms.No.1 Minorities Welfare (M&R) Department dated 16.01.2004, the minority status certificate issued by the competent authority shall be in force for a period of three years from the date of issuance and thereafter, it shall be renewed prior to its expiry period, by making application three months in advance. But, no such certificate was obtained by most of the writ petitioners and as such, they cannot claim the minority status, unless the institution has been issued certificate by the competent authority and consequently, none of the petitioners are entitled to claim such status, as they failed to produce minority status certificate.

The respondents denied the contention of the petitioners that the right of minority institutions to fill the posts of the persons belonging to their choice and that profess their religion is taken away. It is strongly contended by the respondents that, it is left open for the minority educational institutions to appoint competent persons to teach their religion. But, none of the petitioners filed any affidavit along with the writ petitions to prove that they are enjoying the minority status by virtue of declaration by the competent authority. In the absence of any declaration by the competent authority with regard to minority status, the petitioners cannot automatically claim minority status. Therefore, it is contended that, the amendment violates Article 30(1) of the Constitution of India is not true, as the petitioners failed to establish that those institutions were declared as minority institutions after issuing certificate of minority status as per



G.O.Ms.No.1 Minorities Welfare (M&R) Department dated 16.01.2004 and on this ground alone, the petitioners are disentitled to claim any relief in the present petitions.

It is further contended that, amendment to Rule 12 is strictly in accordance with law and it will not take away the rights of the minority educational institutions, subject to proof by the petitioners and therefore, no relief can be granted to these petitioners and prayed for dismissal of the writ petitions.

The contention of the learned counsel for the petitioners in all the writ petitions is one and the same, except in W.P.Nos.45521, 43104 & 30456 of 2018 filed by Sri N. Subba Rao, counsel for the petitioners, to the extent of issuing G.O without following due procedure under A.P. Education Act and Rules framed thereunder. Therefore, to avoid repetition of the contentions, we find that it is appropriate to advert to the contentions as a whole.

The gist of contentions raised before this Court are that, the petitioners/minority educational institutions are entitled to administer and manage the affairs of these institutions, as these institutions were established solely with the object to provide good education to the children, more particularly, to the linguistic or religious minorities in the state. Unless they are allowed to manage and administer the institutions appointing the staff, including teaching and non-teaching staff in the institutions, it will drastically effect the standards being maintained in the educational institutions established by the minorities. Initially, all the petitioners have established their educational institutions and they were given minority status in terms of G.O.Ms.No.1 Education (PS.2) Department dated 01.01.1994 and G.O.Ms.No.40 School Education (PS)



Department dated 30.06.2017 framing Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Schools under Private Management) Rules, 1993 and they were continued as such. The minority educational institutions were permitted to appoint both teaching and non-teaching staff vide G.O.Ms.No.1 Education (PS.2) Department dated 01.01.1994. The said G.O was published in the A.P. Gazette on 03.01.1994. Rules 12 and 13 are relevant for the present, which deals with power of the minority institutions to appoint both teaching and non-teaching staff of their choice by following necessary procedure.

While the matter stood thus, the Commissioner of School Education, A.P, Ibrahimpatnam addressed letter Rc.No.90/PS-1/2015 dated 24.08.2017 to the first respondent and in view of the said letter, Rule 12 of the Rules under G.O.Ms.No.1 Education (PS.2) Department dated 01.01.1994, as amended by G.O.Ms.No.40 School Education (PS) Department dated 30.06.2017 is again amended, taking away the powers of the minority educational institutions to administer and manage the educational institutions for appointing the teaching and non-teaching staff as per the procedure and usurped the power of the institution itself and omitted Rule 13 of the Rules, which indirectly takes away the power of the minority educational institutions which is nothing but interference with the right of minority educational institutions to administer and manage them by religious and linguistic minorities in terms of Article 30(1) and such interference is prohibited, as it is violative of Article 30(1) of the Constitution of India. Learned counsel for the petitioners placed reliance on umpteen number of judgments in support of their contentions which will be referred at the appropriate stage.



Learned counsel for the petitioners further contended that the State can regulate the administration by imposing reasonable restrictions on administration and management of minority educational institutions, but, they cannot usurp the power by taking to appoint both teaching and non-teaching staff. That would cause much prejudice to the quality of education being imparted to the students who are prosecuting studies in their institutions, as such G.O.Ms.No.43 School Education (PS) Department dated 09.08.2018 is illegal and violative of Article 30 of the Constitution of India, as it amounts to interference of State with the administration and management of minority educational institutions established by both linguistic and religious minorities, whose rights are protected under Article 30 of the Constitution of India.

Sri N. Subba Rao, learned counsel for the petitioners in W.P.Nos.45521, 43104 & 30456 of 2018 further raised a specific plea that, G.O.Ms.No.43 School Education (PS) Department dated 09.08.2018 was not passed in strict adherence to Section 99(3) of A.P. Education Act. When the Assembly was not in session, passing of such G.O and amending the rules is a serious illegality and therefore, the very procedure adopted by the State Government for amendment of the rules is a serious illegality and contrary to the procedure prescribed under the Rules. It is contended that, on this ground alone, G.O.Ms.No.43 School Education (PS) Department dated 09.08.2018 has to be struck down as unconstitutional and contrary to the rules for amendment of the provisions of A.P. Education Act.

Whereas, learned Government Pleader for Education vehemently contended that these petitioners are not minority educational institutions and merely because their institutions are



named with minorities, they are claiming to be minority educational institutions, and they are not entitled protection under Article 30 of the Constitution of India, unless, they establish that these institutions were recognized as minority educational institutions in terms of procedure prescribed under G.O.Ms.No.1 Education (PS.2) Department dated 01.01.1994 and obtained a certificate of renewal from time to time. In the absence of such recognition and renewal of it, once every three years, as contemplated under G.O.Ms.No.1 Education (PS.2) Department dated 01.01.1994, the petitioners are disentitled to claim protection under Article 30 of the Constitution of India.

Learned counsel further contended that, the educational institutions being run by the petitioners are not satisfying the rules for recognizing the institutions and furnished information as to the students belonging to different categories prescribing status in the institution and on the strength of the information, it is contended that none of the institutions acquired the status of minority institutions to claim benefit under Article 30 of the Constitution of India. On this ground alone, learned counsel for the respondents sought for dismissal of the writ petitions.

It is also further contended that, the State can impose reasonable restrictions on the power of the educational institutions to regulate the appointment and to achieve Excellency in education. The steps taken by the State amending Rule 12 and omitting Rule 13 of the Rules by G.O.Ms.No.43 School Education (PS) Department dated 09.08.2018 is nothing but to achieve the real objective i.e. to provide good education to the students prosecuting studies in the petitioners-educational institutions and to select highly qualified and meritorious



candidates as teachers. Since the restriction is only in the nature of reasonable restriction, G.O.Ms.No.43 School Education (PS) Department dated 09.08.2018 cannot be scrapped or annulled by exercising power under Article 226 of the Constitution of India and thereby, the petitioners are not entitled to claim any relief on any of the grounds and prayed to dismiss the writ petitions.

Considering rival contentions, perusing the material available on record, the points that arise for consideration are as follows:

- 1) *Whether G.O.Ms.No.43 School Education (PS) Department dated 09.08.2018 amending Rule 12 and omitting Rule 13 of the Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Schools under Private Management) Rules, 1993, is in accordance with the procedure prescribed under Section 99(3) of the A.P. Education Act and the rules framed therein?*
- 2) *Whether G.O.Ms.No.43 School Education (PS) Department dated 09.08.2018 is in consonance of the spirit of Article 30(1) of the Constitution of India. If not, whether G.O.Ms.No.43 School Education (PS) Department dated 09.08.2018 is liable to be declared as unconstitutional?*
- 3) *Whether the petitioners are minority educational institutions established by linguistic or religious minorities and obtained recognition under the rules referred above. If not, whether they are entitled to claim protection under Article 30 of the Constitution of India?*

P O I N T N O . 1 :

Sri N. Subba Rao, Learned counsel for the petitioners in W.P.Nos.45521, 43104 & 30456 of 2018 stated that the State amended Rule 12, while omitting Rule 13 of the Rules and the procedure to be followed by the State after amendment of the rules



framed thereunder. It is the specific contention of the petitioners that, such power has to be exercised to frame rules under any enactment of Sections 78 and 99 of A.P. Education Act. The rule making power under the proviso to Article 309 of the Constitution of India is not available to the State and non-compliance of the procedural requirements under Section 99(3) of the Andhra Pradesh Education Act would render the rules of 2018 vide G.O.Ms.No.43 School Education (PS) Department dated 09.08.2018 illegal and liable to be struck down.

The 2018 Rules are notified by G.O.Ms.No.43 School Education (PS) Department dated 09.08.2018 and the power to issue such G.O., amending the rules is conferred under Sections 78 and 99 of the A.P. Education Act, besides the proviso to Article 309 of the Constitution of India.

Section 78 of the A.P. Education Act deals with Constitution of Educational Service and according to it, (1) Notwithstanding anything in this Act or the rules made hereunder, the Government may, by notification, constitute any officer or class of officers or any teacher or class of teachers appointed or deemed to be appointed under the Andhra Pradesh Education Act. "Notification" means a notification published in the State Gazette and the word 'notified' shall be construed accordingly.

Section 99 of the A.P. Education Act deals with power of government to make rules and Clause (1)(a) says that the Government may by notification make rules to carry out all or any of the purposes of the A.P. Education Act.



Section 99(3) of the A.P. Education Act requires every notification issued and every rule made under the A.P. Education Act, shall immediately after it is issued or made, be laid before each House of the State Legislature if it is in session and if it is not in session in the session immediately following for a total period of fourteen days which may be comprised in one session or in two successive sessions and if, before the expiration of the session in which it is so laid or the session immediately following both Houses agree in making any modification in the notification or in the rule, or in the annulment of the notification or the rule, the notification or the rule shall, from the date on which the modification or annulment is notified, have effect only in such modified form or shall stand annulled, as the case may be ; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification or rule.

Section 99(3) of the A.P. Education Act requires every Rule made under the A.P. Education Act, immediately after it is made, to be laid before each House of the State Legislature if it is in Session, and, if it is not in Session, in the Session immediately following, for a total period of 14 days which may be comprised in one Session or in two successive Sessions; and if, before expiration of the Session in which it is so laid, or the Session immediately following, both Houses agree in making any modification in the Rule, or in the annulment of the Rule, the Rule shall, from the date on which the modification or annulment is notified, have effect only in such modified form or shall stand annulled, as the case may be; however, any such modification or annulment, shall be without prejudice to the validity of anything previously done under that Rule.



Section 99(3) is applicable to the 2018 Rules also and, as a result, these Rules should, immediately after it is issued, be laid before each House of the State Legislature if it is in Session. The earlier session of the Andhra Pradesh State Legislature concluded when the House was adjourned sine-die. Thereafter no session of the Andhra Pradesh State Legislature has been convened so far. The 2018 Rules were made and notified in G.O.Ms. No.43 on 09.08.2018, and was published in the Andhra Pradesh State Gazette. After the Rules were made on 06.06.2018, no Session of either House of the Andhra Pradesh State Legislature has been convened till date. As the State Legislature is not in Session, the requirement of Section 99(3) of the A.P. Education Act, for the rules to be laid before each House of the State Legislature, is incapable of compliance till the next Session of each House of the Andhra Pradesh State Legislature is convened.

As is evident, from Section 99(1)(a) of the A.P. Education Act, the Rules made thereunder would come into force from the date of its publication in the State Gazette. Since the 2018 Rules were published in the Andhra Pradesh State Gazette, they came into force on the same day. The Rules are valid from the date on which they are made. Non-compliance with the laying clause, in Section 99(3) of the A.P. Education Act, does not affect the validity of the Rule or make it void, as it cannot be regarded as mandatory. **(K.T. Plantation (P) Ltd. v. State of Karnataka²)**. When a statute requires the Rules to be placed before the State Legislature, it is the obligation of the State to place the same before the House at the earliest. However, the omission to comply with it would not affect the validity of the Rules and their coming into force. **(K.T. Plantation (P) Ltd.⁶¹; Quarry**

² (2011) 9 SCC 1 : (2011) 4 SCC (Civ) 414



Owners' Assn. v. State of Bihar³). The legislature never intended that non-compliance with the requirement of laying, as envisaged by Section 99(3), should render the Rules void. Consequently non-laying of the Rules before the House, or both Houses of the Legislature, cannot result in nullification of the Rules. (**Atlas Cycle Industries Ltd. v. State of Haryana**⁴; **Craies on Statute Law**; **Jan Mohammad Noor Mohammad Bagban v. State of Gujarat**⁵; **Narendra Kumar v. Union of India**⁶). The answer to the question, whether laying of the Rules before the Legislature is mandatory or directory, or whether laying is a condition precedent to their operation, or can be neglected without prejudice to the effect of the Rules, would depend on the facts and circumstances of each case, or the wording of the Statute under which the Rules are made. (**State of M.P. v. S.K. Dubey**⁷).

Craies on Statute Law refers to three kinds of laying — (i) laying without further procedure; (ii) laying subject to negative resolution; and (iii) laying subject to affirmative resolution. The laying referred to in sub-section (3) of Section 99 is of the second category because it contemplates that the Rule would have effect unless modified or annulled by the House of legislature. (**Hukam Chand v. Union of India**⁸; **S.K. Dubey**^{6b}). Even if Section 99(3), by reason of the failure to place the Rules before the Legislature, is presumed to have been violated, the said provision, having regard to the purposes for which it is made, and in the context in which it occurs, cannot be regarded as mandatory. (**Jan Mohammed Noor Mohammed Bagban**^{6c}). The laying of the Rules before the legislature, under Section 99(3), is merely directory, and not mandatory. Even if the Rules are not laid

³ (2000) 8 SCC 655

⁴ AIR 1972 SC 121

⁵ AIR 1966 SC 385

⁶ AIR 1960 SC 430

⁷ (2012) 4 SCC 578

⁸ (1972) 2 SCC 601



before the House at all, even then non-compliance with the requirement of laying the Rules before the legislature, would not be a ground to declare the Rules, framed under the Statute, ultra vires and invalid. (**Veneet Agrawal v. Union of India**⁹; **Jan Mohammad Noor Mohammad Bagban**⁶⁴; **Atlas Cycle Industries Ltd.**⁶³; **Hukam Chand**⁶⁷; **Bank of India v. O.P. Swarnakar**¹⁰; and **Prohibition & Excise Suptd., A.P. v. Toddy Tappers Coop. Society**¹¹). Where a statutory provision is directory, Courts would not interfere to compel the performance or punish breach of the duty created by such provision, and disobedience of such a provision would not entail any invalidity (**Craies on Statute Law, Seventh Edn., at p. 229; Tulsiram Patel**²⁵).

The same set of facts came up for consideration before the High Court of Judicature at Hyderabad for the State of Telangana and State of Andhra Pradesh in **Chidurala Sudakar v. The State of Telangana**¹², wherein, the Division Bench of the Court laid down the above principles. The difference is only the notifications issued by two different State Governments, in identical circumstances.

The law laid down by the common High Court i.e. High Court of Judicature at Hyderabad for the State of Telangana and State of Andhra Pradesh is a binding precedent on High Court of Andhra Pradesh, after its division from High Court of Judicature at Hyderabad for the State of Telangana and State of Andhra Pradesh. A similar issue came up before this Court in **M. Subbarayudu v. The State**¹³, wherein it was held that the law declared by the Madras High Court prior to its division leading to formation of Andhra Pradesh

⁹ (2007) 13 SCC 116

¹⁰ (2003) 2 SCC 721

¹¹ (2003) 12 SCC 738

¹² 2018 (4) ALT 570

¹³ AIR 1955 AP 87



High Court is a binding precedent on the High Court of Andhra Pradesh after its division in 1954. In view of the law laid down by the Division Bench of High Court of Judicature at Hyderabad for the State of Telangana and State of Andhra Pradesh and by applying the principles laid down by the High Court regarding the binding nature of the precedent laid down by the parent High Court, the issue before this Court is no more *res integra* and consequently, the contention of Sri N. Subba Rao, learned counsel for the petitioners in W.P.Nos.45521, 43104 & 30456 of 2018 that the procedure contemplated under Section 99(3) of the Rules were framed in utter disregard of the procedure contemplated under Section 99(3) of the A.P. Education Act is without any substance and it needs no further consideration. On this ground, the rule amended by G.O.Ms.No.43 School Education (PS) Department dated 09.08.2018 cannot be annulled or set-aside.

As the issue is covered by the judgment of the Division Bench of Common High Court, we are in total agreement with the law declared in the above judgment and by applying the same, we hold that, the deviation from procedure contemplated under Section 99(3) of the Andhra Pradesh Education Act would not render the law made by the State or its instrumentalities vide G.O.Ms.No.43 School Education (PS) Department dated 09.08.2018, amending Rule 12 and omitting Rule 13 of the Rules is invalid. Therefore, on account of non-compliance of procedure, G.O.Ms.No.43 School Education (PS) Department dated 09.08.2018 cannot be set-aside. Accordingly, the point is answered against the petitioners in W.P.Nos.45521, 43104 & 30456 of 2018 filed by Sri N. Subba Rao, learned counsel for the petitioners and in favour of the respondents.



P O I N T N O . 2 :

The petitioners who are claiming to be minority educational institutions filed these petitions challenging G.O.Ms.No.43 School Education (PS) Department dated 09.08.2018, whereby, Rule 12 is amended and Rule 13 is omitted from the Rules.

By virtue of Section 99 of the Andhra Pradesh Education Act, the State Government framed Rules under G.O.Ms.No.1 Education (PS.2) Department dated 01.01.1994, known as Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Schools under Private Management) Rules, 1993. The Rules provides various procedures for establishment, recognition of minority institutions and its administration including appointment of teaching and non-teaching staff. But, for the present, Rule 12 and Rule 13 of the Rules are relevant for consideration of this Court, as Rule 12 was amended and Rule 13 was omitted by G.O.Ms.No.43 School Education (PS) Department dated 09.08.2018 are challenged before this Court.

The difference between original Rule and the amended/omitted Rule is tabulated as follows:

Rule 12 Original	Rule 12 as amended by G.O.Ms.No.43 dated 09.08.2018
<p>(1) The educational agency shall appoint staff as per the staffing pattern prescribed by Government from time to time. All staff shall conform to the qualifications prescribed by the Government from time to time.</p> <p>(2) All the staff teaching as well as non-teaching shall be recruited through staff selection committee to be constituted by the educational agency in accordance with these rules.</p> <p>(3) All the posts shall be advertised in at least two News Papers having large circulation of which one shall be in Telugu. (A) Before filling up of the aided</p>	<p><u>"12. Procedure for filling up of the posts in Aided Institutions:</u></p> <p>1. The merit-cum-roster based recruitment system as is existing be continued. There shall be a separate roster system for each school. The posts shall be filled up accordingly. However this shall not apply to minority educational institution only if they are selecting a candidate belonging to the concerned minority community. Where such a candidate is fitted against a vacancy belonging to S.C./S.T., then the S.C./S.T vacancy shall be carried forwarded to the next recruitment.</p>



teaching or non - teaching posts, the educational agency shall necessarily obtain clearance from the Competent Authority, to the effect that, there are no surplus posts in the concerned district, and if there are suitable surplus candidates, they should be deployed against the said vacancies as per the subjects requirements. The Competent Authority shall however obtain the permission from the Government before issuing clearance for filling up of any posts.

(4) All educational institutions receiving grant-in-aid from Government shall notify vacancies to the Employment Exchange and in addition, advertisements in the News Paper that the shall also be required to call the candidates sponsored by Employment Exchange test and interview provided that the persons playing to the post in response to the advertisement to news papers should have got registered their in any Employment Exchange in the State.

(5) Aided School, shall also be required to have nominee of the District Educational Officer not below the rank of Deputy Educational Officer in the staff Selection Committee. The educational agency all fix the selection process (test) / interview) in consultation with the District Educational Officer or reasonable opportunity of being present. The selection however, shall not be vitiated only on the ground of the absence of District Educational Officer nominee if the educational agency has offered reasonable explanation. The burden of proving this shall lie with the educational agency.

(6) The selection of the posts in all private educational institutional shall conferred the communicate rotation roster. However this shall not apply to minority educational institution only if they are selecting a candidate. Belonging to the concerned minority community. Where such a candidate is fitted a vacancy belonging to S.C. / S.T., then the S.C. / S.T., vacancy shall be carried forwarded to the next.

(7) The Educational Agency shall be free to appoint employee /staff to an un aided post as per subject requirement, provided they have the prescribed qualification to hold the posts. The service conditions of un aided teaching and non teaching staff shall be contractual in nature between the educational agency concerned and the appointee. Dispute s if any, in this regard shall be adjudicated in a civil court of competent jurisdiction/

2. The rationalisation exercise shall be taken up every year in the month of October based on the Aadhaar seeded UDISE enrolment data as on 30th September of that year. The recruitment procedure to fill up vacancies shall be taken up only after completing the promotions, which shall be done on a regular basis every year.

3. The District Educational Officer or the Regional Joint Director, as the case may be, shall estimate the number of posts to be filled in respective unit /School by way of direct recruitment based on teacher-pupil ratio requirement subject wise only after affecting promotions.

4. Regional Joint Director of School Education/District Educational Officer has to confirm that there are no surplus teachers/posts in the district and submit the school-wise posts, required to be filled up in respective unit/ school, by way of direct recruitment to the Commissioner of School Education.

5. The Commissioner of School Education, shall issue notification for filling up of posts for all aided schools of the State duly informing Government.

6. Out of the total posts to be filled in the district, 80% of posts shall be filled with local candidates of the district remaining 20 % would be open to all.

7. The applicants for non-teaching posts will have separate examination as decided by the Commissioner of School Education from time to time.

8. The selection process for teaching and non-teaching vacancies shall be as follows: a. The selection process shall be based on a State Level computer based test/examination. There shall be no interview. b. The procedure of examination including total marks, subjects and the duration of examination shall be decided by the Government. c. Required operational guidelines shall be issued by Commissioner of School Education. The selection process shall be completed within the time schedule prescribed by the Commissioner of School Education. d. Candidates should qualify in the Teacher Eligibility Test (TET) for recruitment to Aided post. e. The Educational qualifications/ Age limit shall be same as the teachers being recruited for Government/Local body schools. f. An officer, not below the rank of Additional Director O/o Commissioner of School Education shall be appointed as convenor for conduct of A-CRT (Aided common recruitment test) selection process. The Commissioner of School



<p>Educational tribunal (as and when constituted) and without reference to competent authority or the Government. However, in the procedure respect of aided posts, the provision of sub rule (4) (5) shall apply.</p> <p>(8) All appointments made either teaching or non-teaching staff by aided or un-aided institutions shall be subject to the approval of the competent authority. For this purpose the educational agency shall inform the competent authority within one-month the selection. The Competent Authority shall grant approval unless the selection has been in violation of these rules. In order to obviate confusion, it shall be incumbent on the educational agency to remind the competent authority one month after the initial communication, if no approval is received. The burden of proof of having communicated the selection to the competent authority shall lie with the educational agency.</p> <p>(9) The educational agency shall make appointment only on the approval as per sub-rule (8) above.</p> <p>(10) Nothing in this rule shall prevent an educational agency from making a temporary appointment in a casual vacancy of unaided post provided that such appointment is not for a period exceeding 60 days. 13. Staff Selection Committee.</p>	<p>Education shall nominate the person to look after the entire recruitment process.”</p>
<p>Rule 13 Original</p>	<p>Rule 13 Omitted</p>
<p>13. Staff Selection Committee:</p> <p>(1) The Staff Selection Committee for the purpose of filling up of an aided post other than promotion shall consist of the following persons as members. (a) President of educational agency or his nominee. (b) Headmaster, who is ex - officio Correspondent /Secretary/ Manager of the Institution. (c) Two subject experts, to be selected by the educational agency from the panel approved by the District Educational Officer. Of these at least one should be the Head Master of a recognized school. (d) An officer of the Education Department not below the rank of Deputy Educational Officer nominated by the District Educational Officer.</p> <p>(2) The President of the educational agency can either be the Chairman, or nominate one of the members of the Staff Selection Committee to be the Chairman.</p> <p>(3) The quorum for the Staff Selection Committee meetings shall be four of which the presence of District Education</p>	<p>In the said rules, the rule 13 shall be omitted.</p>



Officer's nominee is compulsory. 14. Admission of children	
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A bare perusal of G.O.Ms.No.43 School Education (PS) Department dated 09.08.2018 show that the minority educational institutions have to maintain merit-cum-roster based recruitment system as is existing be continued and each school has to maintain the roster system. The vacancies shall be filled up according to the roster system. Similarly, Regional Joint Director of School Education/District Educational Officer has to confirm that there are no surplus teachers/posts in the district and submit the school-wise posts, required to be filled up in respective unit/ school, by way of direct recruitment to the Commissioner of School Education. The Commissioner of School Education, shall issue notification for filling up of posts for all aided schools of the State duly informing Government. Out of the total posts to be filled in the district, 80% of posts shall be filled with local candidates of the district while remaining 20 % would be open to all. Rule 12(7)(8) prescribe the selection process for teaching and non-teaching vacancies and the selection shall be based on a State Level Computer based/examination and there shall be no interview. An officer, not below the rank of Additional Director O/o Commissioner of School Education shall be appointed as a convenor to conduct A-CRT (Aided common recruitment test) selection process. The Commissioner of School Education shall nominate a person to look after the entire recruitment process. But, the procedure under Rule 12 is totally different. So far as roster constituted is concerned, there is no much controversy.



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But, as per Sub-Rule (7) of original Rule 12, G.O.Ms.No.1 Education (PS2) Department, dated 01.01.1994, the Educational Agency shall be free to appoint employee/ staff to an un-aided post as per subject requirement, provided they have the prescribed qualification to hold the posts. As per Sub-Rule (8) of Rule 12, all appointments made either teaching or non-teaching staff by aided or un-aided institutions shall be subject to the approval of the competent authority. For this purpose the educational agency shall inform the competent authority within one-month from the date of selection. The Competent Authority shall grant approval, unless, the selection has been in violation of these rules. In order to obviate confusion, it shall be incumbent on the educational agency to remind the competent authority, one month after the initial communication, if no approval is received. Thus, prior to G.O.Ms.No.43 School Education (PS) Department dated 09.08.2018, the power to recruit or appoint any teaching or non-teaching posts in minority educational institution is subject to approval of competent authority. But, on account of amendment to Rule 12 by G.O.Ms.No.43 School Education (PS) Department dated 09.08.2018, the power of the minority educational institutions is totally taken away and vested on an officer, not below the rank of Additional Director in the office of Commissioner of School Education.

Rule 13 is totally omitted, since such power to recruit or appoint teaching or non-teaching staff is vested with the departmental officials i.e. Additional Director in the office of Commissioner of School Education.

It is the contention of the learned counsel for the petitioners in all the writ petitions that, on account of amendment to Rule 12 by



G.O.Ms.No.43 School Education (PS) Department dated 09.08.2018, the power of administration and management on minority educational institutions which is solely vested on it by virtue of Article 30(1) of the Constitution of India is totally taken away by the State and it is violative of the fundamental right guaranteed under Article 30(1) of the Constitution of India.

Article 30 of the Constitution of India deals with Right of minorities to establish and administer educational institutions. As the case is turning around Article 30(1) of the Constitution of India, it is appropriate to extract the same for better appreciation of the case and it is as under:

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

(1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.

(2) The State shall not, 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.

Article 30 of the Constitution of India consists of three sets of clauses viz. Clauses (1), (1A) and (2). Clause (1) totally deals with rights of minorities to establish and administer educational institutions of their choice. Clause (1A) deals with acquisition of property by the Government belonging to any minority educational institution and Clause (2) deals with grant-in-aid by the Government. Clauses (1A) and (2) of Article 30 of the Constitution of India are irrelevant for deciding the issue in controversy.



Article 30(1) is intended to instill confidence in minorities against any executive or legislative encroachment on their right to establish and administer educational institution of their choice. Article 30(1) though styled as a right, is more in the nature of protection for minorities. But for Article 30, an educational institution, even though based on religion or language, could have been controlled or regulated by law enacted under Clause (6) of Article 19, and so, Article 30 was enacted as a guarantee to the minorities that so far as the religious or linguistic minorities are concerned, educational institutions of their choice will enjoy protection from such legislation. To some extent, what may be permissible by way of restriction under Article 19(6) may fall foul of Article 30 of the Constitution. This is the additional protection which Article 30(1) guaranteed to the minorities.

The expression "right to establish and administer" has gained importance, in view of the real controversy between the parties. The expression has to be interpreted in harmony with the substance of the right conferred by Article 30(1), while Article 20(1) gives a cultural or linguistic minority community the right to conserve its language or culture, Article 30(1) confers religious or linguistic minorities, the right to establish educational institutions of their own choice, for, it is through the education of the children that the group culture can be maintained. But the scope and object of Article 30(1) is wider than the mere conservation of the culture, script, etc., which is indicated by the word 'choice'. The right is to establish institutions which will effectively serve the needs of the community and the scholars who resort to such institutions. The right would be nugatory if the



scholars of such institutions are debarred from the opportunities for higher education or for a useful career in life.

The words 'establish' and 'administer' are two different connotations. The word '**establish**' means to bring into existence an educational institution, while the word '**administer**' would mean the right to manage and conduct the affairs of the institution. Now, the dispute is with regard to 'administration'. The employment of expressions 'right to establish and administer' an 'educational institution of their choice' in Article 30(1) gives a right which is of very wide amplitude.

In view of the meaning 'right to administer' in the contextual perspective, which includes running an institution, including management. Right to administer is not absolute, but it must be subject to reasonable regulations for the benefit of the institutions as the vehicle of education for the minority community, consistent with national interest. General laws of the land applicable to all persons are applicable to the minority institutions also. Though, the minority institutions are entitled to enjoy the right to establish the education of their choice and administer certain limitations are prescribed on such right to administer.

Though Article 30 of the Constitution of India itself does not lay down any limitations upon the right of a minority to administer its educational institutions, this right is not absolute, but must be subject to reasonable regulations, for the benefit of the institution as the vehicle of education for the minority community, consistent with the national interest. (vide **The Ahmedabad St. Xavier College**



Society and another v. State of Gujarat¹⁴ and All Saints High School v. Government of A.P¹⁵, such as-

- (a) *to maintain the educational character and standard of such institution e.g to lay down qualifications or conditions of service to secure appointment of good teachers, to ensure interests of students, to maintain a fair standard of teaching;*
- (b) *to ensure orderly, efficient and sound administration and to prevent maladministration and to secure its proper functioning as an educational institution, to ensure that its funds are spent for the betterment of education and not for extraneous purposes;*
- (c) *to prevent anti-national activity'*
- (d) *to enforce the general laws of the land, applicable to all persons, e.g., taxation, sanitation, social welfare, economic regulations, public order, morality.*
- (e) *To prescribe syllabus, curriculum of study and regulate the appointment of teachers. (vide **Virendra Nath Gupta v. Delhi Administration**¹⁶)*
- (f) *To ensure efficiency and discipline of the institution.*

Such regulations may be made either by legislation or by executive order, but the right of the management of such an institution to appoint the Principal of its own choice cannot be taken away by any rules and regulation. Since the right to 'administer' confers upon the minority institutions the right to manage the institution, and the right conferred by Clause (1) is absolute, no 'restriction' can be imposed by the State on the right of the minority community to manage the institution. (vide **St. Xavier's College v. State of Gujarat** referred supra)/

The whole controversy is with regard to taking away the right to 'Administer' by an officer in the cadre of Additional Director in the office of the Commissioner of School Education, as the amended Rule 12 vide G.O.Ms.No.43 School Education (PS) Department dated

¹⁴ AIR 1974 SC 1389

¹⁵ AIR 1980 SC 1042

¹⁶ AIR 1990 SC 1148



09.08.2018 takes away the absolute right to administer and manage the minority educational institutions.

Though, Article 30(1) of the Constitution of India echoes that, no restriction can be imposed in administration, establishment and management of institutions by linguistic or religious minorities, administration includes appointment of teaching and non-teaching staff. When such an absolute right is conferred on the minorities, enactment of such rules by amending Rule 12 and omitting Rule 13 by G.O.Ms.No.43 School Education (PS) Department dated 09.08.2018 would amount to interference with the administration and management of minority educational institutions, since Article 30 of the Constitution of India has provide an absolute educational protection to the minorities.

The dividing line between how far the regulation would remain within the constitutional limits and when the regulations would cross the limits and be vulnerable, is fine, yet perceptible and has been demonstrated in several judicial pronouncements. Apart from the generalized position of law that right to administer does not include right to mal-administer, an additional source of power to regulate by enacting condition accompanying affiliation or recognition exists. Balance has to be struck between the two objectives:

(i) that of ensuring the standard of excellence of the institution, and (ii) that of preserving the right of the minority to establish and administer its educational institution. Subject to reconciliation of the two objectives, any regulation accompanying affiliation or recognition must satisfy the triple tests:



(i) the test of reasonableness and rationality,

(ii) the test that the regulation would be conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it, and

(iii) that there is no in-road on the protection conferred by Article 30(1) of the Constitution, that is, by framing the regulation the essential character of the institution being a minority educational institution, is not taken away.

(vide **P.A. Inamdar and others v. State of Maharashtra**¹⁷)

To what extent, the State can regulate the administration and what is the permissible limit to interfere with the administration and management of minority educational institutions is again a question. An identical question came up for consideration before the Supreme Court in **The Secretary, Malankara Syrian catholic College v. T. Jose and others**¹⁸. The Apex Court while dealing with the extent of regulation by the State, permissible in respect of employees of minority educational institutions receiving aid from the State, laid down the following guidelines:

(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 view of the principles laid down by the Apex Court, the power of the State to regulate the administration is limited and, recruitment and appointments are not included in the guidelines issued by the

¹⁷ (2005) 6 SCC 537

¹⁸ AIR 2007 SC 570



Apex Court in **The Secretary, Malankara Syrian catholic College v. T. Jose and others** (referred supra).

When any regulation is issued, if they are likely to violate the right guaranteed under Article 30(1) of the Constitution of India, such regulation or rule which abrogates the power of minority educational institutions is ultra-vires. Similarly, while dealing with the extent of interference of framing regulation of the State, the Division Bench of the Apex Court in **St. John's Teacher Training Institute (for Women), Madurai and Ors. v. State of Tamil Nadu and Ors**¹⁹ summarized the broad principles which is as follows:

- (i) *The fundamental right declared by Article 30(1) of the Constitution is absolute in terms, but subject to regulatory measures;*
- (ii) *There is no fundamental right under Article 19(1)(g) of the Constitution to establish or administer an educational institution, if recognition is sought therefor;*
- (iii) *The institutions must be educational institutions of the minorities in truth and reality and not mere masked phantoms;*
- (iv) *There is no fundamental right to recognition and any institution seeking recognition should abide by the regulations prescribed by the State as conditions therefor;*
- (v) *The minority institutions must be fully equipped with educational excellence to keep in step with other institutions in the State;*
- (vi) *The regulations framed by the State cannot abridge the fundamental right of the minorities and they should be in the interests of the minority institutions themselves and not based on State necessity or general societal necessities;*
- (vii) *The regulations should be with a view to promoting excellence of educational standards and ensuring security of the services of teachers and other employees of the institutions and in the true interests of efficiency of institutions, discipline, health, sanitation, morality, public order and the like;*
- (viii) *Even unaided institutions are not immune from the operations of general laws of the land such as Contract Law, Tax measures, Economic Laws, Social Welfare Legislations Labour and Industrial Laws and similar other laws which are intended to meet the need of the Society;*

Learned counsel for the petitioners in all the writ petitions contended that, amending Rule 12 and omitting Rule 13 by G.O.Ms.No.43 School Education (PS) Department dated 09.08.2018 is nothing but direct interference with the administration and

¹⁹ AIR 1994 SC 43



management of educational institutions, since, the rule takes away the power of the management to recruit and appoint teaching and non-teaching staff. Learned counsel for the petitioners, in support of their contentions, placed reliance on the judgments of the Supreme Court in **In re The Kerala Education Bill, 1957, Special Reference No.1 of 1958**²⁰, **Rev. Father W. Proost and others v. The State of Bihar and others**²¹, **The Ahmedabad St. Xavier College Society and another v. State of Gujarat** (referred supra), **All Saints High School v. Government of A.P** (referred supra), **The Secretary, Malankara Syrian catholic College v. T. Jose and others** (referred supra), **IVY C. Da Conceicao v. State of Goa and others**²², **Manager, Corporate Educational Agency v. James Mathew**²³, **N. Ammad v. Manager, Emjay High School and others**²⁴ and judgment of High Court of Judicature at Hyderabad in **Modern High School, Zamisthanpur, Musheerabad, Hyderabad v. Government of Andhra Pradesh** (referred supra).

In re The Kerala Education Bill, 1957, Special Reference No.1 of 1958 (referred supra), several questions came up for consideration before the Larger Bench of the Supreme Court. But, the main dispute before the Constitutional Bench was, as to extent to which the Government can interfere with admissions in minority educational institutions. The judgment did not directly deal with the issue of interference with appointments and recruitment. However, the consistent view expressed by the Constitutional Bench consisting of Eleven Judges is that, the State can interfere with administration only to regulate admissions and service conditions of employees.

²⁰ AIR 1958 Supreme Court 956 (V 45 C 136)

²¹ AIR 1969 Supreme Court 465 (V 56 C 90)

²² (2017) 3 Supreme Court Cases 619

²³ (2017) 15 Supreme Court Cases 595

²⁴ (1998) 6 Supreme Court Cases 674



Earlier to the Special Reference, the Apex Court in **Rev. Father W. Proost and others v. The State of Bihar and others** (referred supra), the Constitutional Bench consisting of Five Judges discussed about the scope of interference of State in the administration and management of minority educational institutions. In paragraph 4 of the said judgment, the controversy was referred to. In the facts of the above judgment, the issue was whether the appointments of teachers in aided colleges shall be made by the Governing Body of the college concerned on the recommendation of the University Service Commission, shall be subject to the approval of the Syndicate. Another question was, whether the State has any say in the recruitment and appointment of teaching and non-teaching staff in view of the amendment to various provisions under Section 48-A (6), (7), (8), (9), (10) and (11) of the Bihar Universities Act, 1960. The Apex Court held that, the width of Article 30(1) of the Constitution of India cannot be cut down by introducing in it considerations on which Article 29(1) is based. The latter article is a general protection which is given to minorities to conserve language, script or culture. the former is a special right to minorities to establish educational institutions of their choice. This choice is not limited to institutions seeking to conserve language, script or culture and the choice is not taken away if the minority community having established an educational institution of its choice also admits members of other communities. That is a circumstance irrelevant for the application of Article 30(1), since no such limitation is expressed and none can be implied. The two articles create two separate rights although it is possible that they may meet in a given case. In paragraphs 11 & 12, the Apex Court held as follows:

elements in the shape of representatives of different type are brought in. The calm waters of an institution will not only be disturbed but also mixed. These provisions in Section 33A (1) (a) cannot therefore apply to minority institutions.

In **All Saints High School v. Government of A.P** (referred supra), the Apex Court considered various aspects as to the admission into minority educational institutions and rights of the minorities to establish educational institutions. The Constitutional Bench of the Apex Court held that, Article 30(1) of the Constitution of India enshrines a fundamental right of the minority institutions to manage and administer their educational institutions which is completely in consonance with the secular nature of our democracy and the Directives contained in the Constitution itself. That although unlike Article 19 the right conferred on the minorities is absolute, unfettered and unconditional but this does not mean that this right gives a free licence for maladministration so as to defeat the avowed object of the Article, namely, to advance excellence and perfection in the field of education. While the State or any other statutory authority has no right to interfere with the internal administration or management of the minority institution, the State can certainly take regulatory measures to promote the efficiency and excellence of educational standards and issue guidelines for the purpose of ensuring the security of the services of the teachers or other employees of the institution. At the same time, however, the State or any University authority cannot under the cover or garb of adopting regulatory measures tend to destroy the administrative autonomy of the institution or start interfering willy nilly with the core of the management of the institution so as to render the right of the



administration of the management of the institution concerned nugatory or illusory. Such a blatant interference is clearly violative of Article 30(1) and would be wholly inapplicable to the institution concerned. Although Article 30 does not speak of the conditions under which the minority educational institution can be affiliated to a college or University yet the section by its very nature implies that where an affiliation is asked for, the University concerned cannot refuse the same without sufficient reason or try to impose such conditions as would completely destroy the autonomous administration of the educational institution. The induction of an outside authority however high it may be either directly or through its nominees in the governing body or the managing committee of the minority institution to conduct the affairs of the institution would be completely destructive of the fundamental right guaranteed by Article 30(1) of the Constitution and would reduce the management to a helpless entity having no real say in the matter and thus destroy the very personality and individuality of the institution which is fully protected by Article 30 of the Constitution. Perhaps there may not be any serious objection to the introduction of high authorities like the Vice-Chancellor or his nominee in the administration particularly that part of it which deals with the conditions of service of the teachers yet such authorities should not be thrust so as to have a controlling voice in the matter and thus over-shadow the powers of the managing committee. Where educational institutions have set up a particular governing body or the managing committee in which all the powers vest, it is desirable that such powers should not be curbed or taken away unless the Government is satisfied that these powers are grossly abused and if allowed to continue may reduce the efficacy or the usefulness of the institution. 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 as to instill confidence in the founders of the institution or the committees constituted by them. Thus, the State can impose certain regulations for protection of teachers, but cannot interfere with the administration and management of the minority educational institutions by passing any regulation, since, it is violative of Article 30(1) of the Constitution of India.

Similarly, in **The Secretary, Malankara Syrian catholic College v. T. Jose and others** (referred supra), the Apex Court discussed the scope of Article 30(1) of the Constitution of India and summarized the general principles relating to establishment and administration of educational institution by minorities as follows:



(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-à-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 non-teaching), 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).*

In **IVY C. Da Conceicao v. State of Goa and others** (referred supra), the Supreme Court had an occasion to deal with the appointment of teacher in aided minority institution who possessed qualification of BA, MA and B.Ed. The Apex Court held that, Constitution in Part III does not contain or give any absolute right. All



rights conferred in Part III of the Constitution are subject to, at least, other provisions of the said Part. It is difficult to comprehend that the framers of the Constitution would have given such an absolute right to the religious or linguistic minorities, which would enable them to establish and administer educational institutions in a manner so as to be in conflict with the other Parts of the Constitution. It is not the law that in the establishment and administration of educational institutions by the religious and linguistic minorities, no law of the land, even the Constitution, is to apply to them. The right to administer does not include the right to maladminister. It has also been held that the right to administer is not absolute, but must be subject to reasonable regulations for the benefit of the institutions as the vehicle of education, consistent with national interest. General laws of the land applicable to all persons have been held to be applicable to the minority institutions also for example, laws relating to taxation, sanitation, social welfare, economic regulation, public order and morality. Even though the words of Article 30(1) are unqualified, this Court has held that at least certain other laws of the land pertaining to health, morality and standards of education apply. The right under Article 30(1) is not absolute. There is no reason why regulations or conditions concerning, generally, the welfare of students and teachers should not be made applicable in order to provide a proper academic atmosphere; as such provisions do not in any way interfere with the right of administration or management under Article 30(1). Laws of the land, including rules and regulations, must apply equally to the majority institutions as well as to the minority institutions. ***So far as the statutory provisions regulating to administration are concerned, in case of an unaided minority educational institution, the regulatory measure of control***



should be minimal and the conditions of recognition as well as the conditions of affiliation to a university or board have to be complied with. But in the matter of day-to-day management, like the appointment of staff, teaching and non-teaching, and administrative control over them, the management should have the freedom and there should not be any external controlling agency. However, a rational procedure for the selection of teaching staff and for taking disciplinary action has to be evolved by the management itself.

In **Manager, Corporate Educational Agency v. James Mathew** (referred supra), appointment of Principal or Headmaster in a minority educational institution came up for consideration and the Apex Court held that, as far as the selection and appointment of the Headmaster or the Principal, as the case may be, is concerned, 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. The right of the minority institutions 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.



In **Modern High School, Zamisthanpur, Musheerabad, Hyderabad v. Government of Andhra Pradesh** (referred supra), High Court of Judicature at Hyderabad had an occasion to deal with the issue of appointment in a minority educational institution, wherein the Division Bench held that, the right to appoint is part of the management which is guaranteed under Article 30(1) of the Constitution and the employers have a right to choose the teachers for minority educational institutions, however, the State can regulate their appointment with regard to their qualifications. For instance, if a minority institution wants to appoint a person who is not qualified to be a teacher, the State can always intervene because the ultimate aim is to impart education and achieve excellence. These institutions cannot be allowed to be run by unqualified persons but at the same time after having laid down the criteria the State cannot impose its own appointees on the institutions which would clearly be an interference in management.

In the facts of the above judgment, appointment of staff in minority educational institutions came up for consideration, in terms of powers conferred on the Government, under Section 99 of the A.P. Educational Institutions Act, 1982 and rules framed by the government by G.O.Ms.No.1 Education (PS2) Department, dated 01.01.1994. Rule 12 was amended giving retrospective effect with effect from 05.08.1998, taking away the power of the minority educational institutions for appointment of staff. The Division Bench of the High Court held that, G.O. contravenes the right of managements of the Educational institutions guaranteed under Article 30(1) of the Constitution of India, since it amounts to depriving



the right of institutions management guaranteed under Article 30(1) of the Constitution of India.

In **St. John's Teacher Training Institute (for Women), Madurai and Ors. v. State of Tamil Nadu and Ors**²⁶, the Hon'ble Supreme Court summarized the broad principles from previous decisions of the Court on the rights relating to minority educational institutions and summarized as follows:

- (i) *The fundamental right declared by Article 30(1) of the Constitution is absolute in terms, but subject to regulatory measures;*
- (ii) *There is no fundamental right under Article 19(1)(g) of the Constitution to establish or administer an educational institution, if recognition is sought therefor;*
- (iii) *The institutions must be educational institutions of the minorities in truth and reality and not mere masked phantoms;*
- (iv) *There is no fundamental right to recognition and any institution seeking recognition should abide by the regulations prescribed by the State as conditions therefor;*
- (v) *The minority institutions must be fully equipped with educational excellence to keep in step with other institutions in the State;*
- (vi) *The regulations framed by the State cannot abridge the fundamental right of the minorities and they should be in the interests of the minority institutions themselves and not based on State necessity or general societal necessities;*
- (vii) *The regulations should be with a view to promoting excellence of educational standards and ensuring security of the services of teachers and other employees of the institutions and in the true interests of efficiency of institutions, discipline, health, sanitation, morality, public order and the like;*
- (viii) *Even unaided institutions are not immune from the operations of general laws of the land such as Contract Law, Tax measures, Economic Laws, Social Welfare Legislations Labour and Industrial Laws and similar other laws which are intended to meet the need of the Society;*

Similarly, in **Sidhajibhai Sabhai and others v. State of Bombay**²⁷, the Constitutional Bench of the Supreme Court considered as to whether the interference with the right of management of an educational institution would amount to infringement of the right to property and held that, interference with the right of bare management of an educational institution does not amount to

²⁶ AIR 1994 SC 43

²⁷ AIR 1963 SC 540



infringement of right to property under Article 19(1)(f) of the Constitution of India. The Apex Court also observed that, Article 30(1) provides that all minorities have the right to establish and administer educational institutions of their choice, and Article 30(2) enjoins the State, in granting aid to educational institutions not to discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language. Clause (2) is only a phase of the non-discrimination clause of the Constitution and does not derogate from the provisions made in Clause (1). The clause is moulded in negative terms: the State is thereby enjoined not to discriminate in granting aid to educational institutions on the ground that the management of the institution is in the hands of a minority, religious or linguistic, but the form is not susceptible of the inference that the State is competent otherwise to discriminate so as to impose restrictions upon the substance of the right to establish and administer educational institutions by minorities, religious or linguistic. The Court also held that, unlike Article 19, the fundamental freedom under Clause (1) of article 30, is absolute in terms; it is not made subject to any reasonable restrictions of the nature the fundamental freedoms enunciated in article 19 may be subjected to. All minorities, linguistic or religious have by Article 30(1) an absolute right to establish and administer educational institutions of their choice; and any law or executive direction which seeks to infringe the substance of that right under Article 30(1) would to that extent be void. This, however, is not to say that it is not open to the State to impose regulations upon the exercise of this right. The fundamental freedom is to establish and to administer educational institutions : it is a right to establish and administer what are in truth educational institutions, institutions



which cater to the educational needs of the citizens, or sections thereof.

In **The Secretary, Malankara Syrian catholic College v. T. Jose and others** (referred supra), reliance was made by the Apex Court in **T.M.A. Pai Foundation v. State of Karnataka**²⁸ in respect of the extent to which the right of administration of aided minority educational institutions could be regulated and it is as follows:

“...the state cannot, when it chooses to grant aid to educational institutions, deny aid to a religious or linguistic minority institution only on the ground that the management of that institution is with the minority. We would, however, like to clarify that if an abject surrender of the right to management is made a condition of aid, the denial of aid would be violative of Article 30(2). However, conditions of aid that do not involve a surrender of the substantial right of management would not be inconsistent with constitutional guarantees, even if they indirectly impinge upon some facet of administration.

It cannot be argued that no conditions can be imposed while giving aid to a minority institution. Whether it is an institution run by the majority or the minority, all conditions that have relevance to the proper utilization of the grant-in-aid by an educational institution can be imposed.... The conditions for grant or non-grant of aid to educational institutions have to be uniformly applied, whether it is a majority-run institution or a minority-run institution. As in the case of a majority run institution, the moment a minority institution obtains a grant of aid, Article 28 of the Constitution comes into play. When an educational institution is maintained out of State funds, no religious instruction can be provided therein.”

The other points discussed in the judgment are not relevant.

The Constitutional Bench, answered Question 5(c) relating to the statutory provisions regulating the facets of administration, and expressed the view that in case of an unaided minority educational institutions, the regulatory measure of control should be minimal; and in the matter of day-to-day management, like the appointment of

²⁸ AIR 2003 SC 355



staff (both teaching and non-teaching) and administrative control over them, the management should have the freedom and there should not be any external controlling agency. But such institutions should have to comply with the conditions of recognition and conditions of affiliation to a University or Board; and a rational procedure for the selection of teaching staff and for taking disciplinary action has to be evolved by the management itself.

In **P.A. Inamdar and others v. State of Maharashtra** (referred supra), the Apex Court once again reiterated the principle laid down in **T.M.A. Pai Foundation v. State of Karnataka** (referred supra) and culled out the following principles:

(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-à-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 non-teaching), 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).

Full Bench of the Kerala High Court in **Aldo Maria Patroni v. E.C. Kesavan**²⁹, stated 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 chiseled 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.

Referring to the above judgments, the Apex Court in **The Secretary, Malankara Syrian Catholic College v. T. Jose and others** (referred supra), concluded that, freedom to choose the person to be appointed as Principal has always been recognized as a vital facet of the right to administer the educational institution. This has not been, in any way, diluted or altered in **T.M.A. Pai Foundation v. State of Karnataka** (referred supra). 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

²⁹ AIR1965Ker75



the Principal is an important part of the right to 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.

In view of the long line of perspective pronouncements the law declared by the Supreme Court in the judgments referred supra, the right under Article 30(1) of the Constitution of India, though not absolute, the Government is competent to formulate certain regulations for the benefit of teachers, students, teaching and non-teaching staff to achieve the excellence in education and cannot interfere with their right in appointing teaching and non-teaching staff, since it exclusively vests with the management of the institution. Such interference is violative of the fundamental right guaranteed under Article 30(1) of the Constitution of India.

Turning to the facts of the present case, in view of G.O.Ms.No.1 Education (PS.2) Department dated 01.01.1994, certain procedure is prescribed and the rule conferred power on the management of the minority institutions to appoint teaching and non-teaching staff, while stating that such selection or appointment of both teaching and non-teaching staff is subject to approval by the competent authority.

Earlier an attempt was made by the State to whittle down the right conferred on the minority institutions and to hijack the power of administration and management of the minority educational institutions and passed G.O.Ms.No.76 dated 02.11.1999, which was the subject matter in **Modern High School, Zamisthanpur, Musheerabad, Hyderabad v. Government of Andhra Pradesh** (referred supra).



This Court, by placing reliance on various judgments, concluded that, taking away the right to appoint teaching and non-teaching staff in the minority educational institutions would infringe the fundamental right enshrined under Article 30(1) of the Constitution of India. The law declared by the Coordinate Bench of this Court in similar circumstances is a binding precedent. Even if the principles laid down by the Supreme Court in long line of perspective pronouncements referred supra are taken into consideration, the State is competent to pass certain regulations but only to limited extent, as referred in In **P.A. Inamdar and others v. State of Maharashtra** (referred supra), **T.M.A. Pai Foundation v. State of Karnataka** (referred supra), **The Secretary, Malankara Syrian catholic College v. T. Jose and others** (referred supra), **The Ahmedabad St. Xavier College Society and another v. State of Gujarat** (referred supra) and **All Saints High School v. Government of A.P.** (referred supra). The State cannot take away the power of the management of minority educational institutions either religious or linguistic to select and appoint either teaching or non-teaching staff and if any attempt is made to interfere with such administration, by prescribing any procedure, it would directly infringe with the fundamental rights guaranteed under Article 30(1) of the Constitution of India.

One of the contentions raised by the learned Government Pleader for Education is that, Section 78 of A.P. Education Act deals with constitution of educational service. According to him, Clause (1) thereof permits the State by notification to constitute any officer or class of officers or any teacher or class of teachers appointed or deemed to be appointed under this Act into an educational service for



the State. According to Clause (2), upon issue of a notification under sub-section (1), the Government shall have power to make rules to regulate the classification, methods of recruitment, conditions of service, pay and allowances and discipline and conduct of the members of the educational service thereby constituted and such rules may vest jurisdiction in relation to such service in the Government or in such authority or authorities, as may be prescribed.

In the present case, there is no dispute with regard to the power of this State, but, the above provision cannot be applied to minority educational institutions, since such rule is violative of the fundamental right guaranteed under Article 30(1) of the Constitution of India, as establishment of minority institutions of religious or linguistic minorities and its administration and management is absolute, subject to reasonable restrictions as referred to in the judgments referred to above. But, in the guise of Section 78 of the A.P. Education Act, the rights of minority educational institutions cannot be hijacked in the name of guidelines or regulations issued by the State. Therefore, we hold that the contention of the learned Government Pleader sans merit.

It is also contended by the learned Government Pleader for Education that, the Government is only appointing teachers whereas the overall control of management, disciplinary action on teachers still vests with the minority institutions. When the Government is the appointing authority, the minority institutions are not competent to have disciplinary jurisdiction over the employees working in the minority educational institutions. The appointing authority alone is the disciplinary authority in normal course of events. If, for any reason, appointments are made by the State, the disciplinary action



shall also be taken by the State alone, but not by the educational institutions, thereby, the minority institutions will not enjoy the fundamental right guaranteed under Article 30(1) of the Constitution of India and any regulation made in violation of fundamental right guaranteed under the Constitution of India by subordinate or delegated legislation or by any other legislation is illegal. Hence, on this ground also, it is difficult to accept the contention of the learned Government Pleader for the State.

In the facts before us in these writ petitions, the dispute is with regard to legality of the regulation i.e. amendment to Rule 12 and omission of Rule 13 by G.O.Ms.No.43 School Education (PS) Department dated 09.08.2018. The State framed the Rules by exercising power conferred under Section 99 of the A.P. Education Act. But, such power can be exercised only to the extent indicated in the law laid down by the Apex Court in various judgments and the extent of such exercisable power referred supra.

If, the subordinate or delegated legislation is violative of fundamental right of an individual or a body, or is contrary to the provisions of the principal legislation, the Court can exercise its power and strike down such provision as unconstitutional is a basic principle.

Though, the educational institutions in the State of Andhra Pradesh are governed by A.P. Education Act, and none of the provisions of A.P. Education Act are in violation of the fundamental right guaranteed under Article 30(1) of the Constitution of India, but, in the guise of regulations or rules, the State amended G.O.Ms.No.1 Education (PS.2) Department dated 01.01.1994 by issuing G.O.Ms.No.43 School Education (PS) Department dated 09.08.2018,



taking away the right of administration of minority educational institutions from its management.

A similar vain attempt was made by the State earlier by issuing G.O.Ms.No.76 dated 02.11.1999. The said G.O was challenged before the High Court in **Modern High School, Zamisthanpur, Musheerabad, Hyderabad v. Government of Andhra Pradesh** (referred supra), wherein the Division Bench struck down the same as being unconstitutional. Despite striking down the G.O, the first respondent again repeated the same mistake, and tried to hijack the power of administration from the minority educational institutions, in utter violation of fundamental right guaranteed under Article 30(1) of the Constitution of India. Since, G.O.Ms.No.43 School Education (PS) Department dated 09.08.2018 infringes the fundamental right of the minority institutions, the same is liable to be struck down. Accordingly, the point is answered in favour of the petitioners and against the respondents.

POINT NO.3

Though the respondents raised several contentions with regard to minority status of the petitioners, this Court, in the present petitions cannot decide the same, as the constitutional validity of G.O.Ms.No.43 is itself challenged before this Court and if this Court strikes down the G.O, which is applicable only to the minority educational institutions whether aided. However, only the minority educational institutions who obtained certificate from the competent authorities as defined under Section 2(1)(a) of the National Commission for Minority Educational Institutions Act, 2004, which deal with establishment, recognition and administration of minority educational institutions providing an appeal against the order passed



by the competent authority. But, in the present facts, it is unnecessary to delve upon such an issue. It is for the government to take appropriate action against the institutions which are not declared as minority educational institutions as per the provisions of National Commission for Minority Educational Institutions Act, 2004. These questions cannot be decided in the present petitions and the same is left open to the State to take appropriate action in this regard.

In view of our foregoing discussion, writ petitions are allowed declaring G.O.Ms.No.43 as void and unconstitutional, as it is violative of fundamental right guaranteed under Article 30(1) of the Constitution of India.

Consequently, miscellaneous applications pending if any, shall stand closed.

//TRUE COPY//

Sd/- CH. VENKATESWAR
ASSISTANT REGISTRAR

SECTION OFFICER

One Fair Copy to the Hon'ble The Acting Chief Justice C. PRAVEEN KUMAR
(For His Lordships Kind Perusal)

One Fair Copy to the Hon'ble Sri. Justice M. SATYANARAYANA MURTHY
(For His Lordships Kind Perusal)

To,

1. The Principal Secretary, School Education Department, State of Andhra Pradesh, Secretariat, Velgapudi, Guntur District
2. The Commissioner and Director of School Education, Andhra Pradesh, Ibrahimpatnam, Krishna District
3. The Regional Joint Director of School Education, Chittoor, Chittoor District
4. The District Educational Officer, Chittoor District, Chittoor.
5. The Special Chief Secretary to the Government, State of A.P, Secretariat Velagapudi, Amaravathi, Guntur District.
6. The Commissioner, School Education, Government of Andhra Pradesh, 24-125, Vijayawada - Mylavaram Road, Bhimaraju Gutta, Ibrahimpatnam, Krishna District - 521 456
7. The Regional Joint Director of School Education, Guntur, Guntur District
8. The District Educational Officer, Collectorate Compound, Guntur District at Guntur.
9. The Prl. Secretary/Spl. General Secretary to Government, School Education(T.S.Dept.), State of Andhra Pradesh, Secretariat, Velagapudi Amaravathi, Guntur Dist.



10. The Regional Joint Director to School Education, Guntur Dist.
11. The Regional Joint Director to School Education, Krishna District.
12. The Regional Joint Director to School Education, Kadapa District.
13. The Regional Joint Director to School Education, Visakhapatnam Dist.
14. The District Educational Officer, Guntur,
15. The District Educational Officer, Krishna District.
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2019:APHC:15860



HIGH COURT

DATED:16/04/2019

OC
2/5/19

ORDER

WP.Nos. 28912, 28924, 29026, 29470, 30456, 32262, 32315, 32337, 33200, 33421, 33478, 34160, 34229, 35133, 37838, 43104, 45079, 45521 and 32808 of 2018

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