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CHANDANA DAS

v.

STATE OF WEST BENGAL & ORS.

(Civil Appeal No. 2858 of 2007)

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DECEMBER 11, 2014

[T. S. THAKUR AND R. BANUMATHI, JJ.]

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Constitution of India, 1950 – Arts 26 and 30 – Khalsa Girls High School in Calcutta – Whether the said School, a minority Institution entitled to appoint its own teachers – Whether the Institution’s right to select and appoint teachers is affected by the provisions of the 1969 Rules – Held: In view of difference of opinion between two Hon’ble Judges, matter referred to larger Bench – Rules of Management of Recognised Non-Government Institutions (Aided and Unaided), 1969 – rr. 28, 33, 8(3) – West Bengal Board of Secondary Education Act, 1963.

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Referring the matters to the larger Bench, the Court

Per T.S. Thakur, J.:

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HELD: 1.1 Linguistic institution and religious are entitled to establish and administer their institutions. Such right of administration includes the right of appointing teachers of its choice but does not denude the state of its power to frame regulations that may prescribe the conditions of eligibility for appointment of such teachers. The regulations can also prescribe measures to ensure that the institution is run efficiently for the right to administer does not include the right to maladministration. While grant in aid is not included in the guarantee contained in the Constitution to linguistic and religious minorities for establishing and running their educational institutions, such grant cannot be denied

to such institutions only because the institutions are established by linguistic or religious minority. Grant of aid cannot, however, be made subservient to conditions which deprive the institution of their substantive right of administering such institutions. Once respondent No.4-institution is held to be a minority institution entitled to the protection of Articles 26 and 30 of the Constitution, the right to appoint teachers of its choice who satisfy the conditions of eligibility prescribed for such appointments under the relevant rules is implicit in their rights to administer such institutions. Such rights cannot then be diluted by the State or its functionaries insisting that the appointment should be made only with the approval of the Director or by following the mechanism generally prescribed for institutions that do not enjoy the minority status. [Para 16][817-H; 818-A-F]

1.2 The view taken by the Division Bench of the High Court that appointments of the appellants were de hors the rules inasmuch as they were not made by the School Service Commission hence did not qualify for approval, cannot be accepted. The mechanism provided for making appointments under Rule 28 of the Rules of Management of Recognised Non-Government Institutions (Aided and Unaided), 1969 has no application to minority educational institutions. Placed in juxtaposition to Rule 33, it is self evident that while Rule 28 applies generally to other institutions; Rule 33 is more specific in its application to minority educational institutions covered by Article 26 or 30 of the Constitution. In the absence of any rules framed for such minority educational institutions, the minority educational institution in the instant case was entitled to select and appoint its teachers so long as other conditions for such appointments, namely, availability

A of substantive vacancies and the eligibility of the candidates for such appointments were duly satisfied. [Para 17, 18][818-F-H; 826-D-F]

B 1.3 The appellants were both duly qualified for appointment as teachers in the subject concerned; and that they have been serving for a considerable length of time on a meagre salary which the institution has been paying to them in the absence of the State Government recognising the appointments and releasing grant in aid against their posts. [Para 19][826-G-H]

C 1.4 As regards the absence of a sanctioned post as on the date the appointments were made, it was submitted that vacancies had subsequently arisen against which the appointments of the appellants could be approved and the salary payable to them from the date of such vacancies becoming available released. If that be so, there is no reason why the appointments of the appellants should not be approved with effect from the date of such vacancies becoming available against which such appointments could be regularised. To that extent the relief prayed for by the appellants shall suitably moulded. [Para 20][827-A-C]

D 1.5 The orders passed by the Division Bench of the High Court are set aside and the writ petitions filed by the appellants are allowed with a direction to the respondents to grant approval to the appointment of the appellants with effect from the date vacancies became available for such appointments. [Para 21][827-D-E]

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G *The Ahmedabad St. Xavier's College Society and Anr. v. State of Gujarat and Anr.* 1975 (1) SCR 173 : (1974) 1 SCC 717; *St. Stephen's College v. University of Delhi* 1991 (3) Suppl. SCR 121 : (1992) 1 SCC 558; *T.M.A Pai Foundation v. State*

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of Karnataka 2002 (3) Suppl. SCR 587 : (2002) 8 SCC 481; *Sindhi Education Society and Anr. v. Chief Secretary, Government of NCT of Delhi and Ors.* 2010 (8) SCR 81 : (2010) 8 SCC 49 – referred to.

Per Banumathi, J.:(Dissenting)

HELD: 1.1 Merely because an educational institution is established by a religious or linguistic minority, it does not automatically become a minority institution for the purposes of claiming right of administration and for getting grant-in-aid. The concerned educational institution so established by the religious or linguistic minority must be recognized or granted the status of minority institution by the competent authorities. The fourth respondent-school was established by the Sikh Community in 1932 and adopted its constitution and bye-laws in 1945. That Sikh Community being a minority in the State of West Bengal does not necessarily imply that the fourth respondent-school would be minority institution as per law. According to the official respondents, minority status was never granted to the fourth respondent-school and only Special Constitution of Management was granted to the school as is seen from the proceedings dated 3.10.1985 of the West Bengal Board of Secondary Education. There is nothing on record to show that the school was granted minority status by the competent authority. [Para 9, 11][831-E-G; 833-B]

1.2 Rule 33 of the Rules for Management of Recognized Non-Government Institutions (both Aided and Unaided) enables the State Government to frame further rules for certain institutions to which the provisions of Article 26 or Article 30 of the Constitution

A of India may apply. Though the fourth respondent-school contends that in terms of Rule 33 of the Rules, no special rules have been framed for minority community institutions, in its representation, the fourth respondent-school requested for grant of minority status in terms of the said rules framed under Rule 33. B The appellants as well as the fourth respondent-school relied upon the document signed by a member of the West Bengal Minorities Commission (dated 6.10.1999) stating that Khalsa Girls High School is enjoying the status of a linguistic minority institution having all facilities enjoyable and available under Articles 29(1) and 30(1) of the Constitution of India. Neither the appellants nor the fourth respondent-school produced any document issued by the competent authority, namely, D the West Bengal Board of Secondary Education, granting minority status to fourth respondent-school. In the absence of any order by the competent authority, the fourth respondent-school is bound by the mandate contained in the Rules. In the absence of any such order E issued by the competent authority or material, the fourth respondent-school cannot claim the status of a minority institution. In terms of Rule 28, the fourth respondent-school can only appoint in permanent posts the persons/ F teachers, who have been recommended by the West Bengal Regional School Service Commission. When the fourth respondent-school has not been granted minority status, the fourth respondent-school cannot appoint its own teachers *dehors* Rule 28 of the Rules. Admittedly, G the appellants were appointed *dehors* Rule 28 and they cannot seek direction for approval of their appointment and arrears of salary. [Paras 12, 13][833-F-H; 834-A-H]

H 1.3 The fourth respondent-school being a recognized aided institution is bound by the 1969 Rules.

Permission for Special Constitution was granted to the fourth respondent-school in terms of Rule 8(3) of the Rules. Having accepted the Special Constitution in terms of Rule 8(3), the fourth respondent-school cannot turn round and contend that it is a minority institution as per special rules framed in terms of Rule 33. Having not challenged the permission for Special Constitution, fourth-respondent-school cannot place reliance on the above decision to contend that it is only a minority institution. [Para 15][835-G-H; 836-A-C]

1.4 Relying upon a document signed by a Member of West Bengal Minorities Commission, on behalf of respondent Nos.4 and 5 a feeble attempt was made to contend that fourth respondent-school was granted minority status with effect from the said date, i.e. 6.10.1999, and by virtue of the said document the fourth respondent-school must be deemed to be a minority institution. The said document is signed by only a Member of the West Bengal Minorities Commission. The proceedings (dated 3.10.1985) of West Bengal Board of Secondary Education continuing the permission of special constitution states that the special constitution of the fourth respondent school is continued until further orders. The fourth respondent-school has not produced any material showing that over the years it has been appointing its own teachers de hors Rule 28 and that those appointments were approved by the DIOS. [Para 16][836-C-G]

1.5 Special constitution has been granted to the fourth respondent-school in terms of Rule 8(3) of the Rules. A reading of Rule 8(3) thereon would clearly show that the institution having special constitution cannot have a managing committee of its own, but the managing committee should be in terms of Rule 8(3) of the Rules

A which indicates that the right of the institution to have
 the managing committee is curtailed. The right of the
 minorities is to establish and to administer educational
 institutions of their choice. Choice must be an absolute
 choice of the minority community. The moment the said
 B right is abridged, the choice no longer remains a choice.
 The Division Bench of the High Court rightly held that
 Rule 8(3) amounts to an imposition abridging the
 fundamental right and, therefore, a special constitution
 permitted under Rule 8(3) cannot be in relation to
 C minority community institutions. [Para 22][839-E-H;
 840-A-C]

1.6 The fourth respondent-school has accepted the
 special constitution in terms of Rule 8(3) and it has not
 D chosen to challenge the same. The High Court rightly
 held that when the fourth respondent-school accepted
 the special constitution and did not claim to be a minority
 institution, the appellants who are merely employees of
 such an institution, cannot contend that the institution
 E was a minority institution governed by the Special Rules
 framed by the State under rule 33 and entitled to appoint
 its own teachers. [Para 23][840-D-F]

1.7 Since the appellants were appointed de hors the
 provisions contained in Rule 28 of the Rules, the High
 F Court rightly held that their appointment is in
 contravention of the Rules and beyond the sanctioned
 strength at the relevant time and no direction could be
 issued for approval of their appointment. The order of
 the High Court does not suffer from any infirmity
 G warranting interference. [Para 24][840-F-G]

*T.M.A. Pai Foundation & Ors. v. State of Karnataka
 & Ors.* 2002 (3) Suppl. SCR 587: (2002) 8 SCC
 481 – held inapplicable.

In Re: The Kerala Education Bill, 1957 1959 SCR 995; *The Ahmedabad St. Xaviers College Society & Anr. v. State of Gujarat & Anr.* 1975 (1) SCR 173 : (1974) 1 SCC 717; *N. Ammad vs. Manager, Emjay High School & Ors.* 1998 (1) Suppl. SCR 453 : (1998) 6 SCC 674 – referred to.

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Case Law Reference:

In the judgment by Thakur, J.

1975 (1) SCR 173	referred to	Para 11	
1991 (3) Suppl. SCR 121	referred to	Para 13	C
2002 (3) Suppl. SCR 587	referred to	Para 14	
2010 (8) SCR 81	referred to	Para 15	

In the judgment by Banumathi, J.

1959 SCR 995	referred to	Para 8	D
1975 (1) SCR 173	referred to	Para 8	
2002 (3) Suppl. SCR 587	held inapplicable	Para 9	
1998 (1) Suppl. SCR 453	referred to	Para 14	E

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2858 of 2007.

From the Judgment and Order dated 23.09.2004 of the Division Bench of the High Court of Judicature at Calcutta in CAN No. 3863 of 2004.

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Civil Appeal No. 2859 of 2007.

Siddharth Bhatnagar, Anurag Singh (For M/s. Legal Options), Advs., for the Appellant.

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Anip Sachthey, Ms. Shagun Matta, Rana Mukherjee, Ms. Kasturika Kaumudi, Shekhar Kumar, Advs. for the Respondents.

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A The Judgments of the Court were delivered by

B **T. S. THAKUR, J.** 1. These appeals arise out of an order dated 23rd September, 2004 passed by a Division Bench of the High Court of Calcutta whereby CANs No.3863/2004 and 3861/2004 filed by the respondent-State of West Bengal and others have been allowed, order dated 18th December, 2003 passed by a Single Bench of the High Court set aside and Writ Petitions No.16256 and 16255 of 2003 filed by the appellants herein dismissed.

C 2. The appellants, it appears, were appointed as teachers on temporary basis in what is known as Khalsa Girls High School, Puddopukur Road, Bhowanipore, Calcutta. Their appointment did not, however, meet the approval of the District Inspector of Schools, Calcutta, according to whom any such
D appointment could be made only on the recommendations of the School Service Commission established under the Rules for Management of Recognised Non-Government Institutions (Aided and Unaided), 1969 (the Rules) (hereinafter referred to as "the Rules").
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F 3. Aggrieved by the order passed by the District Inspector, the appellants approached the High Court of Calcutta in Writ Petitions No.16256 and 16255 of 2003 which were allowed by a learned Single Judge of the High Court by his
G order dated 29th January, 2004 holding that the institution in which the appellants were appointed being a linguistic minority institution was entitled to select and appoint its teachers. The Single Bench accordingly directed the respondents in the writ petitions to approve the appointment of the appellants as whole time teachers with effect from 28th July, 1999 and release the arrears of salary and other service benefits in their favour with effect from the said date.

H 4. Aggrieved by the Judgment and Order of the learned Single Judge, the State of West Bengal, Director of School

Education and District Inspector of Schools preferred CAN A
Nos.3861 of 2004 and 3863 of 2004 against the order passed
by the Single Bench which appeals were allowed and disposed
of by a Division Bench of that Court by a common order dated
23rd September, 2004. The High Court held that since the
Institution in which the appellants were appointed was a B
recognised aided Institution, the Management of the Institution
was bound to follow the mandate of Rule 28 of the Rules
aforementioned which permitted appointments against a
permanent post only if the candidate was recommended for
any such appointment by the School Service Commission. The C
Division Bench further held that the appellants having been
appointed beyond the sanctioned staff strength at the relevant
point of time and *de hors* the rules could not claim any approval
in their favour. The Court noted that directions issued by the D
Director of School Education, Government of West Bengal did
not permit any appointment without the prior permission of the
Director. No such permission had been, in the case at hand,
obtained from the Director. More importantly, the Division
Bench held that since the Institution had not made any claim to E
its being a Minority Institution it was not open to the employees-
writ petitioners to claim any such status on its behalf. The
Division Bench further took the view that once a minority
community applies for a Special Constitution under Sub-Rule F
III of Rule 8 of the said Rules it represents to the State
Government that it was not claiming the status of a minority
institution. The Single bench had, therefore, fallen in error in
holding that the Institution where the appellants worked was a
minority Institution or that the appointment made by such an G
Institution would not be regulated by Rule 28 of the Rules
mentioned above. The present appeals, as noticed above,
call in question the correctness of the view taken by the Division
bench of the High Court.

A 5. The short question that falls for determination is whether
Khalsa Girls High School, Puddopukur Road, Calcutta is a
Minority Institution, if so, whether the Institution's right to select
and appoint teachers is in any way affected by the provisions
of the Rules of Management of Recognised Non-Government
B Institutions (Aided and Unaided), 1969 framed under the
provisions of the West Bengal Board of Secondary Education
Act, 1963.

C 6. The respondent-State contends that respondent No.4-
Institution has not been recognised as a Minority Institution nor
was the minority status claimed by the Institution when it applied
for grant of a Special Constitution under Rule 33 of the Rules
mentioned above. In the absence of a proper recognition of
the minority status of the Institution, it is governed by the rules
D including Rule 28 which regulates the appointment of teachers
in the Institution. The appointment of the appellants in the
present appeals being *de hors* the said procedure was not
entitled to any approval or regularisation by the authorities
concerned, argues the State.

E 7. The Institution's case, on the other hand, is that the
same was and continues to be a linguistic minority institution
from its inception. The affidavit filed on behalf of the Institution
traces the history behind the establishment of the institution
for the benefit of Punjabi speaking Sikhs settled in Calcutta
F and other parts of West Bengal. The affidavit states that on
19th April, 1976 a detailed Memorandum was sent by institution
to the Secretary, West Bengal, Board of Secondary Education
asking for approval of the Special Constitution for the school
in terms of Rule 33 of the Rules mentioned above. That prayer
G was according to the Institution made only because the school
was a Minority Educational Institution. The affidavit also relies
upon recognition of the minority status of the school by West
Bengal Minority Commission in terms of its order dated 6th

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October, 1989. The affidavit states that minority status of the Institution continues despite the grant sanctioned by the State which cannot carry conditions that would have the effect of defeating or diluting the right of minority to establish and administer its own Institutions. It was also contended that Rule 33 of the Rules reserves in favour of the State Government the power to frame further rules for certain Institutions to which the provisions of Articles 26 and 30 of the Constitution apply. No such Rules having been framed a minority can establish and run its Institution in accordance with a Special Constitution that may be sanctioned in its favour. Rule 28 of the Rules relating to appointment of teachers in minority Institutions, therefore, does not apply in the present case.

8. The appellants largely depend upon the fact that the Institution is a minority Institution entitled to appoint its own teachers *de hors* the procedure that is applicable to other institutes governed by the Rules. The historical backdrop in which the respondent-school came to be established is not disputed before us nor is it disputed that Punjabi speaking Sikh community is a linguistic minority not only in the State of West Bengal but in the entire country. So long as these two essential aspects are beyond the pale of any controversy, we see no real reason for holding that an Institution established in the backdrop set out in the counter affidavit by a community that is admittedly a religious and linguistic minority both nationally and in the State of West Bengal should be denied the status of being a minority Institution. The State's version that the institution had never claimed the minority status is not borne out from the record. On the contrary a representation dated 19th April, 1976 filed by the Institution before the Secretary, West Bengal Board of Secondary Education specifically prayed for recognition of its minority status. The representation sets out the circumstances in which the institution was established by the Sikh Community for the

A benefit of students of that community with the support of the Board of Management of Bara Sikh Sangat, Sri Guru Singh Sabha and Gurdwara Sant Rutia. In conclusion, the representation prayed for the following relief:

B *“In the circumstances stated above it is humbly requested that under Rule 33 of the Rules framed and approved by the Government of West Bengal for the administration of aided recognised institutions our Institution may be declared as a minority community*
C *Institution and a special constitution for the same may kindly be approved – the draft of which will be submitted soon.”*

9. In response to the representation the Institution received from the Secretary of the Board a communication dated 3rd October, 1985 stating that the permission for a special constitution granted in terms of Board’s letter dated 7th June, 1962 will continue until further orders and asking the institution to submit an election programme for completion of re-constitution of the Management Committee within a period of six months. The Special Constitution referred to in the representation and the order passed by the Secretary was obviously referable to Rule 8 of the Rules mentioned above. Rule 8(3) which deal with the power of the Executive Committee of the Board to approve a Special Constitution may at this stage be extracted :

G *“8(3) Notwithstanding anything contained in these rules, the Executive Committee shall have the power to approve, on the application of any Institution or class of Institutions, of the special constitution of a Committee in favour of such Institution or class of Institutions and in approving the special constitution of a Committee, the Executive Committee shall pay due regard to the recommendations of the Director, if any. While granting*

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special constitution in favour of an Institution or a class of Institution, the Executive Committee shall ensure that representation of the members of the teaching and the non-teaching staff, guardians and the member nominated by the Director or an officer authorised by him in this behalf, is made according to clause (iii), clause (v) and clause (vi) of Rule 6:

Provided that if the Executive Committee is of the opinion that a school enjoying special constitution has not been functioning properly, the Executive Committee may, after paying due regard to the recommendations of the Director, if any, amend or withdraw such special constitution of a Committee and in that event, the Executive Committee may, by order, appoint an Administrator or an Ad-hoc Committee, as the case may be, to exercise the powers and perform the functions of the Committee for such period as may be specified in the order."

10. A simple reading of the above would show that a Special Constitution is not envisaged for any particular class of institutes. Such Special Constitution can be approved on the application of any Institution or class of institutions. It is immaterial whether the institution is a minority institution or otherwise. The argument that approval of a Special Constitution is by itself indicative of the institution giving up its claim of being a minority institution has not appealed to us. The scheme of the Rules in particular Rule 8(3) (supra) does not suggest either an implied recognition of an institution as a minority Institution or the surrender of any such claim just because a Special Constitution has been approved for it by the Executive Committee of the Board. This is made clear by Rule 33 of the Rules which reserves in favour of the State Government the power to frame rules for institutes governed by the provisions of Articles 26 and 30 of the Constitution of India. Rule 33 reads:

A **“33. Power of the State Government to frame further
rules for certain Institutions –**

Nothing in these rules shall affect the power of the State Government to frame, on the application of any Institution or class of Institution to which the provisions of Article 26 or Article 30 of the Constitution of India may apply, further or other rules for the composition, powers, functions of the Managing Committee or Committees of such Institution or class of Institutions.”

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C 11. The above clearly shows that the State Government is competent to frame rules for minority Institutes governed by Articles 26 and 30 of the Constitution on the application of any such Institute or class of Institutes. Such rules when framed regulate composition, powers, functions of the Managing

D Committee or Committees of such institution or class of Institutions. The State Government has not admittedly exercised the rule making powers reserved in its favour. It follows that once an institute is recognised as a minority institution, its

E minority status would entitle the managing committee of the institution to make appointment of teachers’ against vacancies within its sanctioned strength. The power to make such

F appointments is enjoyed by the Institutes by reason of the constitutional protection which such institutions enjoy. The legal position on the subject is fairly well settled by a long line of

G decisions of this Court. We may refer to only some of those decisions on the subject, we may as well deal with the argument, that grant of a special constitution to a minority institution will be a contradiction in terms, because by granting a special

H constitution under Rule 8(3), the Executive Committee acquires the power in terms of the proviso under the said proviso to appoint an administrator or an ad hoc committee, which will have the effect of abridging the constitutionally guaranteed

rights of the minority to administer the institution. That argument is fallacious for reasons more than one. Firstly, because under the proviso the Executive Committee may amend or withdraw the special constitution if it is of the opinion that the institution has not been functioning properly. That power when exercised may no doubt deny to the institution the advantage, if any, enjoyed by it under such a constitution; but the minority status would remain unaffected by any such amendment or withdrawal. Secondly, because the power to appoint an administrator or an ad hoc committee may or may not be exercised even when the special constitution is either withdrawn or amended. The former does not follow as an inexorable consequence of the latter. Thirdly, because exercise of the power to appoint an administrator for a limited period, is no infraction of the right of the minority to administer the institution as the right to administer guaranteed under the constitution does not include the right to maladminister to borrow the expression used by Khanna J. in ***The Ahmedabad St. Xavier's College Society and Anr. v. State of Gujarat and Anr. (1974) 1 SCC 717*** where His Lordship observed:

"90. We may now deal with the scope and ambit of the right guaranteed by clause (1) of Article 30. The clause confers a right on all minorities, whether they are based on religion or language, to establish and administer educational institutions of their choice. The right conferred by the clause is in absolute terms and is not subject to restrictions, as in the case of rights conferred by Article 19 of the Constitution. The right of the minorities to administer educational institutions does not, however, prevent the making of reasonable regulations in respect of those institutions. The regulations have necessarily to be made in the interest of the institution as a minority educational institution. They have to be so designed as to make it an effective

A *vehicle for imparting education. The right to administer*
 educational institutions can plainly not include the right
 to maladminister. Regulations can be made to prevent
 the housing of an educational institution in unhealthy
B *surroundings as also to prevent the setting up or*
 continuation of an educational institution without
 qualified teachers. The State can prescribe regulations
 to ensure the excellence of the institution. Prescription
 of standards for educational institutions does not
 militate against the right of the minority to administer
C *the institutions. Regulations made in the true interests*
 of efficiency of instruction, discipline, health, sanitation,
 morality, public order and the like may undoubtedly be
 imposed. Such regulations are not restrictions on the
 substance of the right which is guaranteed: they secure
D *the proper functioning of the institution, in matters*
 educational [see observations of Shah, J. in Rev.
 Sidhajbhai Sabhai p. 850]. Further as observed by
 Hidayatullah, C.J. in the case of Very Rev. Mother
 Provincial the standards concern the body politic and
 are dictated by considerations of the advancement of
E *the country and its people. Therefore, if universities*
 establish syllabi for examinations they must be
 followed, subject, however, to special subjects which the
 institutions may seek to teach, and to a certain extent
F *the State may also regulate the conditions of*
 employment of teachers and the health and hygiene of
 students. Such regulations do not bear directly upon
 management as such although they may indirectly
 affect it. Yet the right of the State to regulate education,
G *educational standards and allied matters cannot be*
 denied. The minority institutions cannot be allowed to
 fall below the standards of excellence expected of
 educational institutions, or under the guise of exclusive
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right of management, to decline to follow the general pattern. While the management must be left to them, they may be compelled to keep in step with others."

(emphasis supplied)

12. In **St. Xavier's** case (supra) a Constitution Bench of this Court was examining the scope and ambit of the right of the minority whether based on religion or language to establish and administer educational institutions under clause (1) of Article 30 of the Constitution. The question arose in the context of certain provisions in the Gujarat University Act, 1949 being applied to linguistic or religious minorities. This Court by a majority decision declared that the right of the minorities to administer educational institutions does not prevent the making of reasonable regulations in respect of those institutions. Such regulations can be made to prevent housing of an educational institution in unhealthy surroundings or to prevent the setting up or continuation of an educational institution without qualified teachers. Prescription of standards for educational institutions was not violative of the right of the minority to administer the institutions declared this Court. Regulations made in the interests of efficiency of instructions, discipline, health, sanitation, morality public order and the like can be made and enforced against minority institutions also. Such regulations do not restrict the substance of the right which is guaranteed but only secure a proper functioning of the institution in matters of education. On a comprehensive review of the earlier decisions of this Court, Khanna, J. in his concurring judgment recognised the right of all minority institutions to appoint qualified teachers of its choice and also to exercise disciplinary control over such teachers and other members of the staff of the institution. The following passage is, in this regard, apposite:

"103. Another conclusion which follows from what has been discussed above is that a law which interferes with

A *a minority's choice of qualified teachers or its disciplinary control over teachers and other members of the staff of the institution is void as being violative of Article 30(1). It is, of course, permissible for the State and its educational authorities to prescribe the qualifications of teachers, but once the teachers possessing the requisite qualifications are selected by the minorities for their educational institutions, the State would have no right to veto the selection of those teachers. The selection and appointment of teachers for an educational institution is one of the essential ingredients of the right to manage an educational institution and the minorities can plainly be not denied such right of selection and appointment without infringing Article 30(1)...."*

D 13. That the right to administer does not include the right to maladminister a minority institution was reiterated by another Constitution Bench of this Court in **St. Stephen's College v. University of Delhi (1992) 1 SCC 558** where this Court said:

E *"The need for a detailed study on this aspect is indeed not necessary. The right to minorities whether religious or linguistic, to administer educational institutions and the power of the State to regulate academic matters and management is now fairly well settled. The right to administer does not include the right to maladminister. The State being the controlling authority has right and duty to regulate all academic matters. Regulations which will serve the interests of the students and teachers, and to preserve the uniformity in standards of education among the affiliated institutions could be made. The minority institutions can not claim immunity against such general pattern and standard or against general laws such as laws relating to law and order,*

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*health, hygiene, labour relations, social welfare A
legislations, contracts, torts, etc. which are applicable
to all communities. So long as the basic right of
minorities to manage educational institution is not taken
away, the State is competent to make regulatory
legislation. Regulations, however, shall not have the B
effect of depriving the right of minorities to educate their
children in their own institution. That is a privilege which
is implied in the light conferred by Article 30(1)."*

14. In ***T.M.A Pai Foundation v. State of Karnataka*** C
(2002) 8 SCC 481, this Court had another occasion to examine
the right of the linguistic and minority institutions to establish
and administer their institutions. In the context of grant of aid
to such institutions this Court held that grant of aid cannot be D
made subject to conditions that may impinge upon the right of
the linguistic minority institution to establish and administer its
institution. The conditions that could normally be permitted to
be imposed for minority educational institution receiving grant
must be related to the proper utilisation of the grant and
fulfilment of the objectives of the grant. This Court said: E

*"143. This means that the right under
Article 30(1) implies that any grant that is given by the
State to the minority institution cannot have such
conditions attached to it, which will in any way dilute or F
abridge the rights of the minority institution to establish
and administer that institution. The conditions that can
normally be permitted to be imposed, on the
educational institutions receiving the grant, must be
related to the proper utilization of the grant and fulfilment G
of the objectives of the grant. Any such secular
conditions so laid, such as a proper audit with regard to
the utilization of the funds and the manner in which the
funds are to be utilized, will be applicable and would*

A *not dilute the minority status of the educational institutions. Such conditions would be valid if they are also imposed on other educational institutions receiving the grant.*

B **144.** *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. All that Article 30(2) states is that on the ground that an institution is under the management of a minority, whether based on religion or language, grant of aid to that educational institution cannot be discriminated against, if other educational institutions are entitled to receive aid. 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."*

E 15. More recently this Court had another occasion to examine the rights guaranteed in favour of linguistic and religious minority and the provisions in ***Sindhi Education Society and Anr. v. Chief Secretary, Government of NCT of Delhi and Ors. (2010) 8 SCC 49.*** The question there was whether regulation 64(1)(2) of the Delhi School Education Rules, 1973 and orders and instructions issued therein would, if made applicable to an aided minority educational institution, violate the fundamental right guaranteed under Article 30(1) of the Constitution. This Court held that regulatory powers vested in the State to frame regulations for the objective of ensuring better organisation and development of school education and matters incidental thereto must operate within its limitation. In cases where the minority status was duly accepted and declared by the judgment of the High Court, it was not

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permissible for the Government to stop grant-in-aid on the ground that the institution had failed to comply with the conditions or restrictions otherwise impermissible in law especially in the matter of appointment of teachers of such minority institution where the institution had satisfied the laid down criteria and/or eligibility conditions for such appointments. This Court held that the right to appoint those who possess the eligibility and qualification prescribed cannot be curtailed. The Court observed:

“112. Every linguistic minority may have its own social, economic and cultural limitations. It has a constitutional right to conserve such culture and language. Thus, it would have a right to choose teachers, who possess the eligibility and qualifications, as provided, without really being impressed by the fact of their religion and community. Its own limitations may not permit, for cultural, economic or other good reasons, to induct teachers from a particular class or community. The direction, as contemplated under Rule 64(1)(b), could be enforced against the general or majority category of the government-aided schools but, it may not be appropriate to enforce such condition against linguistic minority schools. This may amount to interference with their right of choice and, at the same time, may dilute their character of linguistic minority. It would be impermissible in law to bring such actions under the cover of equality which in fact, would diminish the very essence of their character or status. Linguistic and cultural compatibility can be legitimately claimed as one of the desirable features of a linguistic minority in relation to selection of eligible and qualified teachers.”

16. It is unnecessary to multiply decisions on the subject for the legal position is well settled. Linguistic institution and

- A religious are entitled to establish and administer their institutions. Such right of administration includes the right of appointing teachers of its choice but does not denude the state of its power to frame regulations that may prescribe the conditions of eligibility for appointment of such teachers. The regulations can also prescribe measures to ensure that the institution is run efficiently for the right to administer does not include the right to maladministration. While grant in aid is not included in the guarantee contained in the Constitution to linguistic and religious minorities for establishing and running their educational institutions, such grant cannot be denied to such institutions only because the institutions are established by linguistic or religious minority. Grant of aid cannot, however, be made subservient to conditions which deprive the institution of their substantive right of administering such institutions. Suffice it to say that once respondent No.4-institution is held to be a minority institution entitled to the protection of Articles 26 and 30 of the Constitution of India the right to appoint teachers of its choice who satisfy the conditions of eligibility prescribed for such appointments under the relevant rules is implicit in their rights to administer such institutions. Such rights cannot then be diluted by the State or its functionaries insisting that the appointment should be made only with the approval of the Director or by following the mechanism generally prescribed for institutions that do not enjoy the minority status.

17. The view taken by the Division Bench of the High Court that appointments of the appellants were *de hors* the rules inasmuch as they were not made by the School Service Commission hence did not qualify for approval, does not appear to us to be sound. The mechanism provided for making appointments under Rule 28 has no application to minority educational institutions. Rule 28 reads as under:

- “28. Powers of Committee - (1) In an aided institution the Committee shall, subject to the provisions of any**

Grant-in-aid Scheme or Pay Revision Scheme or any order or direction or guide-lines issued by the State Government or the Director in connection therewith and in force for the time being, have the power -

(i) to appoint on the recommendation of the West Bengal Regional School Service Commission in respect of the region concerned, teachers on permanent or temporary basis against permanent or temporary vacancies, if and when available, within the sanctioned strength of teachers and on approval by the Director or any Officer authorized by him, such approval being sought for within a fortnight from the date of decision of the committee in this behalf;

(ia) to appoint, in accordance with the directions given by the Director or in his behalf, teachers and other employees against the leave/lien/deputation vacancies, if available, within the sanctioned strength;

(ib) to appoint, in accordance with the directions given by the Director or any officer authorised by him in his behalf, the Assistant Headmaster or the Assistant Headmistress against the vacancy within the sanctioned strength from among the approved teachers.

(ic) to appoint, in accordance with the directions given by the Director or any officer authorised by him in his behalf, part time teachers on such terms and conditions as may be specified by the Government from time to time for a period of one year with a provision of renewal with the break, against the posts of part time teacher created for the Higher Secondary Section of Higher Secondary Schools.

(ii) to appoint non-teaching employees on permanent or temporary basis against permanent or temporary vacancies, if and when available, within the sanctioned

A *strength of non-teaching employees and on approval by the Directors or any Officer authorized by him, such approval being sought for within a fortnight from the date of decision of the committee in this behalf;*

B *(iii) to extend, if it thinks fit, the service of any teacher or other employee, who was in service on the 31st December, 1985, but did not opt for the revised scales of pay introduced with effect from the 1st January, 1986, or having opted for such revised scale of pay, subsequently withdraws such option in terms of any order of the State Government in this behalf, beyond the age of 60 years, being the age of superannuation, on a year to year basis, but not beyond the age of 65 years;*

D *Provided that the teacher or the employee concerned is physically fit and mentally alert and that the approval for such extensions shall be sought for from the Director or any other Officer authorized by him, within a period of 15 days from the date of decision of the Committee;*

E *Provided further that the teacher or other employee, who withdraws his option for the revised scales of pay introduced with effects from the 1st January, 1986, in terms of any order of the State Government in this behalf, shall be deemed to have not opted for the said revised scales of pay;*

F *Provided also that not with withstanding anything contained in this clause, such teacher or employee may opt for any revised scale of pay under any subsequent Pay Revision Scheme, if he agrees to retire in accordance with the terms of such schemes or at the age of superannuation for the time being in force, where there is no such term.*

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[T. S. THAKUR, J.]

(2) If the officer authorized by the Director under sub-rule (1) does not approve the appointment or extension of service in any case coming under clause (i) or clause (ii) or clause (iii) of sub rule (1), as the case may be, he shall refer the case to the Director and in the case of disapproval of any appointment or extension of service, the Director or the Officer authorized by him shall communicate to the Committee the reasons therefor.

(3) Where the committee does not recommend extension of the service of a teacher or an employee under clause (iii) of sub-rule (1), it shall record specific reasons therefore and the person concerned may make his representation to the Director through the District Inspector/Inspectors of schools concerned and so far as the committee is concerned, the decision of the Director shall be final.

(4) In an unaided Institution the Committee shall, subject to the approval of the Board, have the power-

(i) to appoint in accordance with the directions given by the Director, or in his behalf, teachers and other employees on permanent or temporary basis, approval of such appointment being thereafter sought for from the Board through the Director ordinarily within a fortnight from the date of decision of the committee:

(ii) to extend as per condition laid down by the Director the services of teachers and other employees beyond the date of superannuation, approval for such extension being thereafter sought for from the Board ordinarily within a week from the date of decision of the committee.

(5) if in any case coming under clause(i) or clause(ii) of sub-rule(4) the Board does not approve the appointment the appointment or extension of service,

A as the case may be, it shall communicate to the committee the reasons for disapproval.

(6) where the committee does not recommend extension of service of a teacher under clause(ii) of sub-rule(4) it shall record specific reason therefore and the person concerned may make his representation to the board and the decision of the board in the matter shall be final so far as the committee is concerned.

(7) in all cases of appointment, both permanent and temporary, the committee shall issue letters of appointment, specifying the terms and conditions of such appointment. In the case of a permanent appointment, a teacher or an employee appointed on probation shall be confirmed on the expiry of the period of probation unless an order to the contrary is issued at least 6 weeks before the date on which confirmation normally falls due. In the case of an appointment on temporary basis against a permanent post the teacher or the employee so appointed shall be confirmed on completion of 2 years' continuous satisfactory service in the institution:

Provided that no appointment shall be made in a vacancy if it is not against a sanctioned post, permanent or temporary.

(8) Both in aided and un-aided Institutions the committee shall have the power, subject to the prior approval of the board, to remove or dismiss permanent or temporary teachers and other employees. For this purpose the committee shall first draw up formal proceedings and issue charge-sheet to the teacher or the employee concerned, and offer him reasonable facility for defending himself. The teacher or the employee proposed to be proceeded against shall

submit his explanation, ordinarily, within a fortnight of the receipt of the charge-sheet, the committee shall send to the Board all relevant papers including the charge-sheets, explanations submitted by the teachers or the employee concerned and the reason for which the Committee decides in favour of taking disciplinary action. If the Board considers that there are sufficient grounds for taking disciplinary action the Committee shall issue formal notice calling upon the teacher or the employee concerned to show-cause, ordinarily within a fortnight, why he should not be dismissed or removed from service. The committee shall, then, send again to the Board all relevant papers including the explanations submitted by the teacher or the employee concerned and the recommendations of the committee for the action proposed to be taken. So far as the Committee is concerned, the decision of the Board shall be final:

Provided that the Board may delegate to any committee constituted under section 24 of the act the powers and functions conferred on the Board by this sub-rule.

(8.a) in case of lapses on the part of permanent or temporary teachers and other employees of an institution, which do not warrant removal or dismissal of the persons concerned, the Committee may impose minor penalties, like 'stoppage of one to three increments in pay, reduction of pay in the timescale and censure, with the prior approval of the Board. In all such cases, the Committee shall observe the procedure laid down in sub-rule (8).

(8.b) in the case of teaching and non-teaching staffs of an institution detained in custody for a period exceeding 48 hours under any law providing for preventive

A *detention or as a result of a proceeding for preventive detention or as a result of a proceeding either on a criminal charge or otherwise, such staffs shall be deemed to have been suspended by an order of the appointing authority, with effect from the date of*
B *detention and shall remain under suspension until further orders.*

A teaching or non-teaching staff who is undergoing a sentence of imprisonment shall also be dealt with in the same manner, pending a decision on the disciplinary action to be taken against him.

C *(9) in aided and un-aided Institutions the Committee shall have the power -*

D *(i) to grant leave other than casual leave which shall be granted by the Head of the Institutions and by the Secretary of the Committee in the case of the Head of the Institution; to grant increments in pay to teachers and other employees in accordance with the procedure laid down from time to time or where in aided schools that grant of increment is regulated by grant-in-aid rules; in accordance with such rules;*
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(ii) to grant free or half- free studentship to students in accordance with the procedure laid down from time to time, but ordinarily with the consent of the Head of the Institution.

F *(iii) to manage funds of the institutions as per direction given by the Director from time to time.*

G *(iv) to frame annual report;*

(v) to deal with all schemes of development of the institutions and such other manners;

H *(vi) to allocate the total period of holidays in a year but special holiday for a day or a portion thereof on account*

of death of any prominent person or for any special occasion concerning the institution may be granted by the Secretary or the Head of the Institution at his discretion; A

(vii) to grant deputation of teachers, where such deputation is in the interest of the institution provided that a teacher affected by the decision of the Committee may make his representation to the Director; B

(viii) to suspend a teacher or an employee where such suspension is in the interest of the institution, pending drawal of proceedings against the person concerned within 90 days from the date of suspension and during the period of suspension, the person concerned shall be paid pay and allowances equal to the 50% of the pay and allowances drawn by him immediately before such suspension. Such steps shall be referred to the Board within 7 days of such action for approval. The person affected by the decision of the Committee may, however, make his/ her representation to the Board. The order of suspension shall automatically stand withdrawn in case proceeding are not drawn within a period of 90 days, provided that in exceptional circumstances this time limit may be waived by the Board after due consideration of the facts of the case, but under no circumstances the time-limit shall be waived beyond the limit of 1 year; C
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Provided that where the period of suspension exceeds 90 days, the amount of subsistence allowance shall be increased after the expiry of 90 days to 75% of the pay and allowances drawn immediately before such suspension; G

Provided further that the person concerned shall not be entitled to any subsistence allowance if he/she H

- A *accepts employment during the period of suspension elsewhere.*
- (viii) to deal with other matters that are brought to the Committee in the interest of the Institution.*
- B *Note: After clause (i) of sub-rule (9) of Rule 28, add the following note:*
- "The Committee shall grant leave according to rules shown in the appendix."*
- C *Note: An Institution receiving recurring financial assistance in any shape or form the State Government either for maintenance or for payment of salary and/or allowances of teachers and/or other employees thereof shall be treated as an aided Institution for the purposes of these rules."*
- D

18. Placed in juxtaposition to Rule 33 of the Rules extracted earlier, it is self evident that while Rule 28 applies generally to other institutions; Rule 33 is more specific in its application to minority educational institutions covered by Article 26 or 30 of the Constitution. In the absence of any rules framed for such minority educational institutions the minority educational institution in the present case was entitled to select and appoint its teachers so long as other conditions for such appointments, namely, availability of substantive vacancies and the eligibility of the candidates for such appointments were duly satisfied.

19. It is not, in the instant case, disputed that the appellants were both duly qualified for appointment as teachers in the subject concerned. It is also not in dispute that they have been serving for a considerable length of time on a meagre salary which the institution has been paying to them in the absence of the State Government recognising the appointments and releasing grant in aid against their posts.

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20. The only other question that could possibly arise in the matter of approval of such appointments was the absence of a sanctioned post as on the date the appointments were made. It was contended by learned counsel for the appellants that vacancies had subsequently arisen against which the appointments of the appellants could be approved and the salary payable to them from the date of such vacancies becoming available released. If that be so, we see no reason why the appointments of the appellants should not be approved with effect from the date of such vacancies becoming available against which such appointments could be regularised. To that extent the relief prayed for by the appellants shall suitably moulded.

21. In the result I allow these appeals, set aside the orders passed by the Division Bench of the High Court and allow the writ petitions filed by the appellants with a direction to the respondents to grant approval to the appointment of the appellants with effect from the date vacancies became available for such appointments. Consequential relief including arrears of salary for the relevant period i.e. from the date the appointments are approved shall also be released in favour of the appellants.

22. Parties are directed to bear their own costs.

R. BANUMATHI, J. 1. I have gone through the judgment prepared by His Lordship Justice T.S. Thakur. But, for the reasons which I shall indicate, I am unable to agree with the interpretation placed on Rule 8, Sub-rule (3) of the Rules for Management of Recognized Non-Government Institutions (Aided and Unaided) 1969 and other reasonings. Consequently, I do not also agree with the final decision as, in my opinion, the present appeals are liable to be dismissed and the judgment of the High Court has to be upheld.

A 2. Khalsa Primary School was started by the Sikh
Community living in Calcutta in 1932 for the purpose of
promoting their culture and religious tenets and imparting the
education to the pupils belonging to their community. The said
B Khalsa School was upgraded as High School and the State
Government granted recognition to the institution in 1954.
C Special Constitution granted to the Managing Committee in
terms of Rule 8, Sub-rule (3) of the Rules for Management of
Recognised Non-Government Institutions (Aided and Unaided)
1969 (for short 'the Rules') was ordered to be continued until
further orders by the proceedings dated 3.10.1985.

 3. The appellant-Chandana Das (Malakar) in Civil Appeal
No. 2858 of 2007 was appointed as an Assistant Teacher in
D Science and Maths group on 1.4.1988 on a consolidated pay
of Rs.600/- per month. The appellant-Sukhbinder Kaur in Civil
Appeal No.2959 of 2007 was appointed as Physical Training
Teacher from November 1984 on temporary basis on a
consolidated pay of Rs.300/- per month. The fourth
E respondent-School sent the proposal to the District Inspector
of Schools (DIOS) for regularization of the services of the
appellants. The appellants approached the High Court by filing
F writ petitions (W.P.Nos.10032/96 & 12443/97 by Chandana
Das & W.P.Nos.10033/96 & 12442/97 by Sukhbinder Kaur)
and those writ petitions were disposed of directing DIOS to
consider the representation of the appellants. DIOS refused
to approve the appointment of the appellants on the ground
that recruitment procedure was not maintained at the time of
G appointment and as per the sanctioned strength of staff pattern,
there was no vacant post in the respective groups. The
appellants again approached the High Court by filing writ
H petitions (being W.P.Nos.16256/03 & 16255/03) respectively
which were allowed by the learned Single Judge on the ground
that the appointment of a teacher was an essential facet of
administration of minority educational institutions and the

institutions had the right to choose their teachers and the fourth respondent-school was entitled to appoint its own teachers. Being aggrieved, the State of West Bengal preferred appeals before the High Court. By the common judgment, the Division Bench of the High Court allowed the appeals holding that the institution is not a minority institution and that the appellants were appointed *dehors* the provisions contained in Rule 28 of the Rules and hence no direction could be issued for approval of their appointment and payment of their arrears of salary. Being aggrieved, the appellants have filed these appeals.

4. Even though the prayer in the writ petitions is for direction to the Education Department-DIOS to grant approval to the appointment of the appellants and to pay their arrears of salary over the years, the appellants based their claim mainly contending that the fourth respondent-school is a minority institution and is entitled to appoint its own teachers *dehors* the provisions of the Rules for Management of Recognized Non-Government Institutions (Aided and Unaided) 1969. The issue primarily arising for consideration is whether the fourth respondent-school can claim the status of a minority institution entitled to appoint its own teachers *dehors* Rule 28 of the Rules.

5. Recognized non-Government Institutions, both aided and unaided, are governed by the Management of Recognised Non-Government Institutions (Aided and Unaided) Rules; 1969. Rule 28 of the Rules stipulates that in the matters of appointment of teachers on permanent or temporary basis against permanent or temporary vacancies, if and when available, appointment to be made only on the recommendation of the West Bengal Regional School Service Commission and on approval by the Director or any officer authorized by him. As per Rule 28 (ia), the appointments are to be made in accordance with the directions given by the Director only within the sanctioned strength of teachers and on approval of the Director or a person authorized by him. Rule 28 thus clearly

A stipulates that a recognized institution can appoint a teacher on a permanent vacancy only if such teacher has been recommended for such appointment by the School Service Commission. The school cannot appoint anyone else. It is to be pointed out that there was no recommendation in favour of the appellants by the West Bengal Regional School Service Commission. Since the appellants were appointed without any recommendation of the School Service Commission, DIOS rightly refused to grant approval to the appointment of the appellants as recruitment procedure in terms of Rule 28 was not followed at the time of appointment of the appellants.

6. Contention of the learned counsel for the appellants is that fourth respondent-school is enjoying the status of a linguistic minority institution for conserving its group culture and language and it has got every right of administration and it has the right to choose its Managing Committee and appoint its own teachers. The appellants rely upon the representation of the fourth respondent-school (dated 19.4.1976) in which the fourth respondent-school has traced the history as to how Khalsa Girls High School was formed by the Sikh community.

7. The impugned judgment of the Division Bench of the Calcutta High Court is as under:

“.... In such view of the matter, a Constitution permitted under Sub-Rule III of Rule 8 of the said Rules cannot be in relation to minority community institutions. That has been amply cleared by framing Rule 33 in the management Rules which specifically deals with institutions entitled to protection of Articles 26 and 30. It authorizes the State Government to make special rules for constitution of the Managing Committee of such institutions. The moment a minority community applies for a special constitution under Sub-Rule III of Rule 8 of the said Rules it represents to the State Government that

it is not claiming the status of minority community at least
at the time when such application is made....” A

In my considered view, the above reasonings of the
Calcutta High Court is to be affirmed for the reasons indicated
by me herein.

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8. Article 30(1) of the Constitution of India gives rights to
minorities to establish and to administer educational institutions
of their choice. In the journey of interpreting the provisions of
Articles 29 and 30 of the Constitution of India, this Court has
elaborated the scope and ambit of the rights conferred by
Articles 29 and 30 of the Constitution of India in favour of
religious or linguistic minorities in various judgments, viz. *In*
Re: The Kerala Education Bill, 1957 [1959 SCR 995], *The*
Ahmedabad St. Xaviers College Society & Anr. v. State of
Gujarat & Anr. [(1974) 1 SCC 717] and *T.M.A. Pai Foundation*
& Ors. v. State of Karnataka & Ors. [(2002) 8 SCC 481]. C
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9. Merely because an educational institution is
established by a religious or linguistic minority, it does not
automatically become a minority institution for the purposes
of claiming right of administration and for getting grant-in-aid.
The concerned educational institution so established by the
religious or linguistic minority must be recognized or granted
the status of minority institution by the competent authorities.
The fourth respondent-school was established by the Sikh
Community in 1932 and adopted its constitution and bye-laws
in 1945. That Sikh Community being a minority in the State of
West Bengal does not necessarily imply that the fourth
respondent-school would be minority institution as per law.
According to the official respondents, minority status was never
granted to the fourth respondent-school and only Special
Constitution of Management was granted to the school. As
the fourth respondent-school was never declared to be a
minority institution by the competent authorities, the judgment

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A in *T.M.A. Pai Foundation's* case is not applicable to the fourth respondent-school.

B 10. The fourth respondent-school in its representation dated 19.4.1976, has requested for grant of minority status in terms of Rule 33 of the Rules and that the institution may be declared as a minority community institution. We may usefully extract the prayer in the said representation, which reads as under:

C “...it is humbly requested that under Rule 33 of the Rules framed and approved by the Government of West Bengal for the administration of aided recognized institutions our institution may be declared as a minority community institution and a special constitution for the same may kindly be approved – the draft of which will be submitted soon.”

D 11. The fourth respondent-school was granted only Special Constitution as is seen from the proceedings dated 3.10.1985 of the West Bengal Board of Secondary Education, which reads as follows:

E “West Bengal Board of Secondary Education
77/2, Park Street, Calcutta-16

Dated: 3.10.85

F To
The Headmistress
Khalsa Girls' High School
75, Padmapukur Road,
Calcutta – 20

G Sub: Special Constitution of the Managing Committee
of the School

Madam,

H I am directed to state that the permission of Special Constitution as per Board's letter No.4311/G dated

7.6.62 will be continued until further order...

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Sd/-

for (Secretary)”

As seen from the above, the school was only granted Special Constitution in terms of the Rules. There is nothing on record to show that the school was granted minority status by the competent authority.

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12. Rule 33 of the Rules enables the State Government to frame further rules for certain institutions to which the provisions of Article 26 or Article 30 of the Constitution of India may apply. In case of minority institution, special rules so framed will apply. Rule 33 of the Rules reads as under:

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“33. Power of the State Government to frame further rules for certain Institutions—Nothing in these rules shall affect the power of the State Government to frame, on the application of any Institution or class of Institution to which the provisions of Article 26 or Article 30 of the Constitution of India may apply, further or other rules for the composition, powers, functions of the Managing Committee or Committees of such Institution or class of Institutions.”

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13. The fourth respondent-school has not produced any document to show that it has been accorded the minority status. Though the fourth respondent-school contends that in terms of Rule 33 of the Rules, no special rules have been framed for minority community institutions, in its representation referred above, the fourth respondent-school has requested for grant of minority status in terms of the said rules framed under Rule 33. The appellants as well as the fourth respondent-school rely upon the document signed by a member of the West Bengal Minorities Commission (dated 6.10.1999) stating that Khalsa Girls High School is enjoying the status of a linguistic

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- A minority institution having all facilities enjoyable and available under Articles 29(1) and 30(1) of the Constitution of India. Neither the appellants nor the fourth respondent-school have produced any document issued by the competent authority, namely, the West Bengal Board of Secondary Education,
- B granting minority status to fourth respondent-school. In the absence of any order by the competent authority, the fourth respondent-school is bound by the mandate contained in the Rules for Management of Recognized Non-Government Institutions (both Aided and Unaided) Rules. In terms of Rule
- C 28, the fourth respondent-school can only appoint in permanent posts the persons/teachers, who have been recommended by the West Bengal Regional School Service Commission. Rule 28(1) reads as follows:-
- D **“28. Powers of Committee—**(1) In an aided institution the Committee shall, subject to the provisions of any Grant-in-aid Scheme or Pay Revision Scheme or any order or direction or guidelines issued by the State
- E Government or the Director in connection therewith and in force for the time being, have the power-
- (i) to appoint on the recommendation of the West Bengal
- F Regional School Service Commission in respect of the region concerned, teachers on permanent or temporary basis against permanent or temporary vacancies, if and when available, within the sanctioned strength of teachers and on approval by the Director or any officer authorized by him, such approval being sought for within a fortnight from the date of decision of the committee in this behalf;”
- G When the fourth respondent-school has not been granted minority status, the fourth respondent-school cannot appoint its own teachers *dehors* Rule 28 of the Rules. Admittedly, the appellants were appointed *dehors* Rule 28 and they cannot seek direction for approval of their appointment and arrears
- H of salary.

14. On behalf of respondent Nos. 4 & 5 it was contended that the fourth respondent-school is a minority institution and declaration of its minority status by the Government could only be a recommendation of an existing fact and therefore rights of fourth respondent-school as a minority institution cannot be tinkered with and right to appoint teachers of its own choice cannot be wished away. In support of this contention, reliance was placed upon the judgment of this Court in *N. Ammad vs. Manager, Emjay High School & Ors.* (1998) 6 SCC 674 wherein it was held as under:-

“12. Counsel for both sides conceded that there is no provision in the Act which enables the Government to declare a school as a minority school. If so, a school which is otherwise a minority school would continue to be so whether the Government declared it as such or not. Declaration by the Government is at best only a recognition of an existing fact. Article 30(1) of the Constitution reads thus:

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

13. When the Government declared the School as a minority school it has recognised a factual position that the School was established and is being administered by a minority community. The declaration is only an open acceptance of a legal character which should necessarily have existed antecedent to such declaration. Therefore, we are unable to agree with the contention that the School can claim protection only after the Government declared it as a minority school on 2-8-1994.”

15. The fourth respondent-school being a recognized aided institution is bound by the Rules for Management of Recognized Non-Government Institutions (Aided and Unaided)

A 1969. As noticed earlier, permission for Special Constitution was granted to the fourth respondent-school in terms of Rule 8(3) of the Rules. Having accepted the Special Constitution in terms of Rule 8(3), the fourth respondent-school cannot turn round and contend that it is a minority institution as per special
B rules framed in terms of Rule 33. Having not challenged the permission for Special Constitution, fourth-respondent-school cannot place reliance on the above decision to contend that it is only a minority institution.

C 16. Relying upon a document dated 6.10.1999 signed by a Member of West Bengal Minorities Commission, on behalf of respondent Nos.4 and 5 a feeble attempt was made to contend that fourth respondent-school was granted minority status with effect from the said date, i.e. 6.10.1999, and by
D virtue of the said document the fourth respondent-school must be deemed to be a minority institution. The said document is signed by only a Member of the West Bengal Minorities Commission. The proceedings (dated 3.10.1985) of West Bengal Board of Secondary Education continuing the
E permission of special constitution states that the special constitution of the fourth respondent school is continued until further orders. The fourth respondent-school has not produced any further orders issued by the competent authority, namely, the West Bengal Board of Secondary Education, recognizing
F the fourth respondent-school as the minority institution. Be it noted that the fourth respondent- school has not produced any material showing that over the years it has been appointing its own teachers *dehors* Rule 28 and that those appointments were approved by the DIOS. In the absence of any such order
G issued by the competent authority or material, the fourth respondent-school cannot claim the status of a minority institution.

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17. Let me now consider the scope of Special Constitution in terms of Rule 8(3) of the Rules and when the fourth respondent-school has accepted the Special Constitution whether it can still claim minority status. A

18. As noticed earlier, the management of both aided and unaided recognized institutions is governed by the Management of Recognised Institutions (Aided & Unaided) Rules, 1969. Rule 6 of the Rules provides for composition of the management committee of an institution other than that sponsored by the State Government. Rule 6A of the Rules provides for manner of formation of a managing committee. Rule 8 lays down the power of the Executive Committee of the Board of Secondary Education to grant special constitution and approve or supersede managing committee, appoint administrator or ad-hoc committee. 'Special Constitution' means the special provision regarding representations in the Managing Committee. As per Rule 8(3), there has to be proper representation of the members of the teaching and the non-teaching staff, guardians and the member nominated by the Director etc. B
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19. In terms of Rule 8(3) of the Rules, the Executive Committee shall have the power to approve the special constitution of a committee in favour of any institution. As per the proviso to Rule 8(3), if the Executive Committee is of the opinion that a school enjoying special constitution has not been functioning properly, the Executive Committee may withdraw such special constitution of the committee and in that event, the Executive Committee may appoint an administrator or an ad-hoc Committee. Rule 8(3) of the Rules reads as under: F
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“8(3). Power of Executive Committee to approve and supersede Committee, to appoint Administrator or ad-hoc Committee and to grant special constitution:

A (3) Notwithstanding anything contained in these rules,
the Executive Committee shall have the power to approve,
on the application of any Institution or class of Institutions,
of the *special constitution* of a Committee in favour of
such Institution or class of Institutions and in approving
B the special constitution of a Committee, the Executive
Committee shall pay due regard to the recommendations
of the Director, if any. While granting special constitution
in favour of an Institution or a class of Institutions, the
C Executive Committee shall ensure that representation of
the members of the teaching and the non-teaching staff,
guardians and the member nominated by the Director
or an office authorized by him in this behalf, is made
according to clause (iii), clause (v) and clause (vi) of Rule
6:

D Provided that if the Executive Committee is of opinion
that a school enjoying special constitution has not been
functioning properly, the Executive Committee may, after
paying due regard to the recommendations of the
E Director, if any, amend or withdraw such special
constitution of a Committee and in that event, the
Executive Committee may, by order, appoint an
Administrator or an Ad-hoc Committee, as the case may
be, to exercise the powers and perform the functions of
F the Committee for such period as may be specified in
the order."

G 20. Clause (1) of Article 30 of the Constitution of India
provides that all minorities whether based on religion or
language shall have the right (i) to establish and (ii) to administer
educational institutions of their choice. The expression 'to
establish' means to set up on permanent basis. The
expression 'to administer' means to manage or to attend to
the running of the affairs of the institution. The choice must be

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the absolute choice vested absolutely in the minority community. A

21. This Court in *The Ahmedabad St. Xaviers College Society* (supra) considered the scope of the expression 'administer' and held as under:

".....The right to administer is said to consist of four principal matters. First is the right to choose its managing or governing body. It is said that the founders of the minority institution have faith and confidence in their own committee or body consisting of persons selected by them. Second is the right to choose its teachers. It is said that minority institutions want teachers to have compatibility with the ideals, aims and aspirations of the institution. Third is the right not to be compelled to refuse admission to students. In other words, the minority institutions want to have the right to admit students of their choice subject to reasonable regulations about academic qualifications. Fourth is the right to use its properties and assets for the benefit of its own institution." B C D E

22. In terms of Rule 8(3) of the Rules, the special constitution of an institution should comprise according to clause (iii), clause (v) and clause (vi) of Rule 6. As per the proviso to Rule 8(3) of the Rules, if the Executive Committee is of the opinion that a school enjoying special constitution has not been functioning properly, the Executive Committee may, after paying due regard to the recommendations of the Director, if any, amend or withdraw such special constitution of a Committee and appoint an Administrator or an Ad-hoc Committee. Special constitution has been granted to the fourth respondent-school in terms of Rule 8(3) of the Rules. A reading of Rule 8(3) thereon would clearly show that the institution having special constitution cannot have a managing committee of its own, but the managing committee should be in terms of F G H

A Rule 8(3) of the Rules which indicates that the right of the institution to have the managing committee is curtailed. The right of the minorities is to establish and to administer educational institutions of their choice. Choice must be an absolute choice of the minority community. The moment the said right is abridged, the choice no longer remains a choice. In my considered view, the Division Bench of the Calcutta High Court has rightly held that Rule 8(3) of the Rules amounts to an imposition abridging the fundamental right and therefore a special constitution permitted under Rule 8(3) cannot be in relation to minority community institutions. Having accepted the special constitution in terms of Rule 8(3) of the Rules, the fourth respondent-school cannot contend that it is a minority institution governed by the special rules framed by the State under Rule 33 of the Rules.

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23. The fourth respondent-school has accepted the special constitution and it has not chosen to challenge the same. As rightly held by the High Court, when the fourth respondent-school has accepted the special constitution and has not claimed to be a minority institution, the appellants who are merely employees of such an institution, cannot contend that the institution was a minority institution entitled to appoint its own teachers.

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24. Since the appellants were appointed *dehors* the provisions contained in Rule 28 of the Rules, the High Court rightly held that their appointment is in contravention of the Rules and beyond the sanctioned strength at the relevant time and no direction could be issued for approval of their appointment. The impugned order of the High Court does not suffer from any infirmity warranting interference.

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25. In the result, the appeals are dismissed. Parties shall bear their respective costs.

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ORDER

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In view of the divergence of opinion in terms of separate judgments pronounced by us in these appeals today, the Registry is directed to place the papers before Hon'ble the Chief Justice for appeal being assigned to a Three-Judge Bench.

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Nidhi Jain

Matters referred to larger Bench.