the show cause notice, within three months from today. He will be entitled to all the benefits accruing therefrom. If the petitioner faces reprisal at the hands of the respondents as a result of this judgment, he can move this Court for remedial action. The Registrar (Judicial) of this Court is directed to send a copy of this judgment to the Chief Secretary to Government, Haryana and also convey my concern over the callous attitude of respondent No. 2 in this case and also my expectation that in future there would be no recurrence of such a type. In the circumstances of this case, I make no order as to costs.

R.N.R.

Before : G. R. Majithia & A. S. Nehra, JJ.

OM PARKASH ARORA,—*Petitioner*

versus

THE PRESIDING OFFICER, COLLEGE AND SCHOOL TRIBUNAL AND OTHERS,—*Respondents.*

Civil Writ Petition No. 7512 *of* 1987.

September 28, 1992.

Constitution of India, 1950—*Article* 30(1)—*Punjab Privately Managed Recognised School Employees (Security of Service) Act,* 1979—*Ss.* 4(1), 4(2), 5, 6 & 7—*Minority Institution—Right to administer Aided Privately Managed School—Validity of Provisions of Punjab Act, challenged as* ultra vires *Art.* 30(1)—*S.* 4(2) *providing for right of appeal to an employee who has been dismissed, removed or reduced in rank or time scale to the School Tribunal—S.* 4(2) *is constitutionally valid—S.* 4(1) *making prior approval of Director mandatory before imposition of order of penalty is* ultra vires *Art.* 30(1)—*Held, in view of striking down of S.* 4(1). *S.* 4(3) *is rendered redundant—No specific challenge laid to Ss.* 11 & 12—*Court however, holding the power conferred by Ss.* 11 & 12 *cannot be exercised in a manner which will impinge upon rights of a Minority Institution guaranteed under Art.* 30(1).

(Paras 26, 27, 28. 29 & 30)

Held, that a right of appeal provided for under sub-section (2) of section 4 of the Punjab Act to an employee who has been dismissed, removed or reduced either in rank or within a time scale to the School Tribunal is upheld on the same parity of the reasoning as given by the apex Court in Frank Anthony Public School Employees' Association *v.* Union of India and others. A.I.R. 1987, S.C. 311.

Held, that from the analysis of the judgments, it emerges that under Article 30 of the Constitution, minorities whether based on religion or language, have fundamental freedom to establish educational institutions of their own choice, but the State has a right to prescribe regulatory legislation securing condition and security of service of teachers and other employees and ensuring education excellence. This will include provisions governing the conditions of service of teachers and their security of service and providing for effective measures to ensure compliance with the same. Minorities which do not seek recognition of the educational institution run by them from the State are free to function according to their own choice, but if such an institution seeks recognition from the State, it has to comply with the conditions prescribed for granting recognition and in that event, the minority institution has to follow the prescribed syllabus for examination, courses of study and other allied matters.

Held, that as regards the provisions of section 11 & 12 of the Punjab Act in so far as they pertain to the initiation of any penal action against the schools governed by the Punjab Act, no specific challenge to any adverse orders has been made in the writ petition. These sections contain only general provisions to be exercised in exceptional cases on proof of facts justifying the action. The exercise of these powers pre-supposes that it has to be exercised to secure proper functioning of the minority institutions in matters of educational and other allied matters. These powers cannot be exercised which in any manner will impinge upon the right of the minority ensured under Art. 30(1) of the Constitution.

Held, that the minorities, whether based on religion or language, have the right to establish and administer educational institution. Although the right conferred on the minority by Article 30(1) of the Constitution is absolute and unconditional but this does not give them a licence to maladministration. The State or any other statutory authority has no right to interfere with the internal administration or management of the minority institution, but it can certainly take regulatory measures to promote the efficiency of educational standards and frame regulations for the purposes of ensuring the security of service of teachers and other employees of the institution, discipline and fairness in administration. The provisions of the Punjab Act except contained in sub-section (1) of section 4 are permissible regulations made for the purpose of safeguarding the right of the staff of a privately managed recognised school. The provisions contained in sub-section (1) of section 4 of the Punjab Act impinge upon the right of minorities under Art. 30(1) of the Constitution. This provision is inapplicable to the unaided minority institutions. Provision of sub-section (3) of section 4 of the Punjab Act is rendered redundant for the reason that sub-section (1) of Section 4 has been held to be *ultra vires* of Article 30(1) of the Constitution.

Held, that the Tribunal was in error in holding that the appeal was incompetent, if the school is privately managed recognised school receiving grant-in-aid from the State, the petitioner has got a

statutory remedy of appeal under sub-section (2) of section 4 of the Punjab Act. Looking into the matter from any angle, the petitioner's right of appeal against termination of his services is maintainable. We accordingly set aside the order of the School Tribunal dated September 8, 1987 and direct the Tribunal to dispose of the appeal afresh in accordance with law.

Petition Under Articles 226/227 *of the Constitution of India praying that this Hon'ble Court be pleased to send for the records of the case, and after a perusal of the same* :—

(*i*) *issue a writ, order or direction, especially in the nature of* Certiorari, *quashing the orders dated* 15*th June,* 1987 *and* 8*th September,* 1987;

(*ii*) *issue a writ* mandamus, *directing the respondents to reinstate the petitioner in service with all consequential benefits, such as salary, arrears, increments, seniority etc. etc.*

(*iii*) *issue any other writ, order or direction, this Hon'ble Court deems fit and proper in the peculiar circumstances of the case;*

(*iv*) *dispense with the filing of attested copies of the annexures;*

(*v*) *dispense with the issuing of advance notices on the respondents;*

(*vi*) *allow the writ petition with costs in favour of the petitioner.*

(*This case was referred to Larger Bench by Hon'ble Mr. Justice A. L. Bahri on* 21*st March,* 1989 *and his lordship observed that the following question in the above noted case be considered by Larger Bench.*

" xx xx xx xx xx

xx xx xx

"As to whether a religious minority educational institution has free control of administration in the matter of employment of teaching staff and the provisions of the Punjab Privately Managed Recognised School (Security of Service) Act, 1979 *would be applicable to the institution ?"*

The Division Bench consisting of Hon'ble Mr. Justice G. R Majithia and Hon'ble Mr. Justice A. S. Nehra decided the case finally on 28*th September,* 1992).

Deepak Agnihotri, Advocate with Girish Agnihotri, Advocate, *for the petitioner.*

Gulshan Sharma, DAG, Punjab, H. B.S. Gujral, Advocate with Mr. R. S. Kapur Advocate for Respondent No. 4, *for the Respondent.*

JUDGMENT

G. R. Majithia, J.

Om Parkash Arora, a former Drawing Master, K. K. High School, Rajpura, has impugned the order of the College and School Tribunal, Punjab (for brevity, the School Tribunal) dated September 8, 1987 holding that the appeal preferred by him against the order dated June 15, 1987, passed by the Manager, K. K. High School, Rajpura terminating his services was incompetent, in this petition under Articles 226/227 of the Constitution of India.

The facts :—

(2) The petitioner having been appointed as a Drawing Master in K. K. High School, Rajpura (for brevity, the School) joined service on August 14, 1976. On completion of his probation period, he was confirmed against that post. A show cause notice dated March 13, 1987, regarding his misbehaviour with Smt. Puran Devi Verma on March 9, 1987 was issued to him. He filed reply to that notice. No action was taken pursuant thereto. However, his services were terminated in accordance with clause 6 of the agreement of service on June 15, 1987. He challenged this order in appeal before the School Tribunal. The same was dismissed being incompetent. Aggrieved against this order, the petitioner has approached this Court.

Written statement has been filed on behalf of the management and the Headmaster of the School. A preliminary objection has been taken that the writ petition is not maintainable against a private institution as it is not a State within the ambit of Article 12 of the Constitution. It was admitted that the School was receiving grant-in-aid. It was denied that the allegations contained in the show cause notice dated May 20, 1987 were false. However, on receipt of the affidavit of the petitioner, further proceedings pursuant to the show cause notice were dropped. The services of the petitioner were terminated on June 15, 1987 in terms of the agreement of employment dated August 14, 1976, signed by him. The School Tribunal, on the material placed before, it, came to the conclusion that the School was controlled and managed by Sanatan Dharam Pratinidhi Sabha, a religious minority body, and is governed by Article 30 of the Constitution. The provisions of the Act are inapplicable to the employees of the School.

(3) The writ petition came up for hearing before learned Single Judge, who formulated the following questions :—

> "As to whether a religious minority educational institution has free control of administration in the matter of employment of teaching staff and the provisions of the Punjab Privately Managed Recognised School (Security of Service) Act, 1979 would be applicable to the institution ?"

and referred it for decision by a larger Bench. It is how this matter has been placed before us.

(4) Before we proceed to answer this question, it must be made clear that the learned Single Judge has not recorded a finding that the School is minority-run-instruction. We are only answering the question as it framed by the learned Single Judge.

(5) Article 30 of the Constitution, which enumerates the rights of minorities in India rests as under :—

> "30. (1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institution of their choice.
>
> (1A) ... ...
>
> (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."

Clause (1) of Article 30 is a protective measure only for the benefit of religious and linguistic minorities. The right claimed by a minority community depends upon the proof of establishment of the institution. The proof of establishment of the institution, is, thus, a condition precedent for claiming the right to administer the institution. The minorities whether based on religion or language have the right to establish and administer educational institutions of their choice. The administration of educational institutions of their choice under this clause means "management of the affairs of the institution." This management must be free from control so that the founder or their nominees can mould the instruction as they think fit, and in accordance with their ideas of how the interests of the community in general and the institution in particular will be best served. But the standards of education are not a part

of the management as such. The standard concerns the body politic and is governed by considerations or the advancement of the country and its people. Such regularitions do not bear directly upon management although they may indirectly affect it. The State, therefore, has the right to regulate the standard of education and allied matters. Minority institutions cannot be permitted to fall below the standards of excellence expected of educational institutions. They cannot decline the follow the general pattern of education under the guise of exclusive right of management. While the management must be left to them, they may be compelled to keep in step with others. (See in this connection *State of Bombay* v. *Bombay Education Society* (1), *Re Kerala Education Bill* (2), *Sidhajbhai Sabhai* v. *State of Bombay* (3), *Rev. Father Proos* v. *State of Bihar* (4), and *State of Kerala* v. *Mother Provincial* (5). Though this clause is couched in absolute terms in marked contrast with other fundamental rights in Part III of the Constitution, it has to be read subject to the power of the State to regulate education, educational standards and allied matters. In this context, it will be useful to refer to the decision of the Apex Court in *The Ahmedabad St. Xaviers College Society and another* v. *State of Gujarat and another* (6), which is a decision of nine-Judge Bench. After referring to the earlier decisions on the subject, Hon'ble the Chief Justice A. N. Ray (as his Lordship then was) with whom Hon'ble Mr. Justice D. G. Palekar, concurred observed thus :—

> "Educational institutions are temples of Learning. The virtues of human intelligence are mastered and harmonised by education. Where there is complete harmony between the teacher and the taught, where the teacher imparts and the student receives, where there is complete dedication of the teacher and the taught in learning, where there is discipline between the teacher and the taught, where both are worshippers of learning, no discord or challenge will arise. An educational institution runs smoothly when the teacher and the taught are engaged in the common ideal of pursuit of knowledge. It is, therefore, manifest that the appointment of teachers is an important part in educational institutions. The qualifications

(1) 1985 1 S.C.R. 568.
(2) 1957, 1959 S.C.R. 995.
(3) (1963)3 S.C.R. 837.
(4) 1969(2) S.C.R. 734.
(5) (1971) 1 S.C.R. 734.
(6) A.I.R. 1974 S.C. 1389.

and the character of the teachers are really important. The minority institutions have the right to administer institutions. This right implies the obligation and duty of the minority institutions to render the very best to the students. In the right of administration, checks and balances in the shape of regulatory measures are required to ensure the appointment of good teachers and their conditions of service. The right to administer is to be tempered with regulatory measures to facilitate smooth administration. The best administration will reveal no trace or colour of minority. A minority institution should shine in exemplary eclectism in the administration of the institution. The best compliment that can be paid to a minority institution is that it does not rest on or proclaim its minority character.

"Regulations which will serve the interest of the students, regulations which will serve the interests of teachers are of paramount importance in good administration. Regulations in the interest of efficiency of teachers, discipline and fairness in administration are necessary for preserving harmony among affiliated institutions."

(6) In a recent judgment in *St. Stephen's College etc. etc.* v. *The University of Delhi, etc. etc.* (7), the apex Court by a majority view held thus :—

"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 students and teachers, and to preserve the uniformity in standards of education among the affiliated institutions could be made. The minority institutions cannot claim immunity against such general pattern and standard or against general laws such as laws relating to law and order, health, hygiene, labour relations, social welfare legislations contracts, torts, etc. which are applicable to all communities. So long as the basic right of

(7) A.I.R. 1992 S.C. 1630.

minorities to manage educational institution is not taken away, the State is competent to make regulatory legislation. Regulations, however, shall not have the effect of depriving the right of minorities to educate their children in their own institution. This is a privilege which is implied in the right conferred by Article 30(1)."

(7) Now the stage is set to examine whether any of the provisions of the Punjab Privately Managed Recognised Schools Employees (Security of Service) Act, 1979 (for short the Punjab Act) impinges upon the right of the minorities to administer educational institutions or these have been designed only to make it an effective vehicle for imparting education.

(8) The statement of objects and reasons for the enactment of the Act reads thus :—

"Employees of the privately managed aided schools have been pressing for parity of pay scales and allowances with employees of the same status in the Government service. They also stress for retirement benefits, setting up of a Judicial Tribunal, laying down their service conditions raising the rate of their provident fund and for effective control over the management of privately managed schools. It is felt that security of service of employees of privately managed recognised schools in the State of Punjab and for matters connected there with and incidental thereto, should be provided."

It is necessary to refer to the scheme and important provisions of the Act. The title of the Act provides for security of service to employees of privately managed recognised schools in the State of Punjab and for matters connected therewith and incidental thereto. Section 2(a) defines 'aided post' as meaning the post on the establishment of a privately managed recognised school against which such a school gets grant-in-aid from the State Government. Section 2(b) defines 'Director' as meaning the Director Public Instruction (Schools), Punjab and Director of Public Instructions (Primary Education), as the case may be, and includes any other officer authorised by him in this behalf. Section 2(c) defines 'employee' as meaning any person employed on an aided post in any privately managed recognised school for hire or reward (whether the terms of employment be express or implied and for the purposes of any proceedings under this Act in relation to any employment dispute includes the person dismissed or removed from service but does not include as

part-time employee. Section 2(d) defines "existing school" as meaning a privately managed recognised school which is in existence at the commencement of the Act; Section 2(e) defines "meaning committee" as meaning the body of the individuals who are entrusted with the management of any privately managed recognised school; Section 2(f) defines the term "prescribed" as meaning prescribed by Rules made under the Act; Section 2(g) defines "privately managed recognised school" as meaning a school, which is not run by the Central Government, the State Government, a local authority or any other authority designated or sponsored by the Central Government, State Government or local authority, as the case may be, and is recognised by the State Government for imparting pre-primary, primary middle, high and higher secondary education or training below the degree level, but does not include an institution which imparts technical education; and Section 2(h) defines "School Tribunal" as meaning a School Tribunal constituted under section 8 of the Act. Chapter II of the Act deals with terms and conditions of service of employee and it consists of Sections 3 to 8. Section 3 of the Act says that the minimum qualifications for recruitment and the conditions of service of the employees shall be such as may be prescribed. First proviso to this section says that the salary or the rights in respect of leave of absence, age of retirement and pension of an employee of an existing school shall not be varied to the disadvantage of such employee. Second proviso to this section says that every such employee shall be entitled to opt for the terms and conditions of service as were applicable to him immediately before the commencement of the Act. Sub-section (1) of Section 4 says that subject to any rule that may be made in this behalf, no employee shall be dismissed, removed or reduced either in rank or within a time scale nor shall his services be otherwise terminated except with the prior approval of the Director. Sub-section (2) of Section 4 enables any employee who has been dismissed, removed or reduced in rank or within a time scale under sub-section (1) of Section 4 to appeal to the School Tribunal against such order within three months from the date of communication to him of the order of such dismissal, removal or reduction. Sub-section (3) of section 4 says that the managing committee aggrieved with the order of the Director may appeal to the School Tribunal within a period of three months from the date of communication of the order. Section 5 says that no employee shall be kept under suspension for a period exceeding six months without the prior approval of the Director. Section 6 says that every employee shall be governed by such Code of Conduct as may be prescribed and on the violation of any provision of such Code of Conduct, the

employee shall be liable to such disciplinary action as may be prescribed. Section 7 says that notwithstanding anything contained in Section 3, the scale of pay and dearness allowance of the employees shall not be less than those of the employees of the State Government holding corresponding posts in the schools run by the State Government. Proviso to this section enjoins upon the Direction to direct the managing committee of a privately managed recognised school to grant the same scales of pay and dearness allowance as are allowable to the employees of the State Government holding corresponding posts in the schools run by the State Government. Section 8 enables the State Government to constitute one or more School Tribunals for the purposes of the Act for such area as may be specified in such notification. Sub-section (2) of Section 3 says that a School Tribunal shall consist of one person only to be appointed by the State Government. Sub-section (3) of Section 8 says that a person shall not be qualified for appointment as a Presiding Officer of a School Tribunal unless he is or has been a Judge of the High Court or an Officer of the State Government not below the rank of a Commissioner of a Division. Sub-section 4 of Section 8 says that the terms and conditions of service of the Presiding Officer of the School Tribunal shall be such as may be prescribed. Proviso to this Section says that no person shall hold office as the Presiding Officer of a School Tribunal beyond the age of sixty-five years. Sub-section (6) of this Section says that the State Government shall make available to the School Tribunal such staff as may be necessary in the discharge of its functions under the Act. Sub-section (7) of this Section provides that all expenses incurred in connection with the School Tribunal shall be borne by the State Government. Sub-section (8) says that the School Tribunal shall have the power to regulate its own procedure in all matters arising out of the discharge of its functions including the place or places at which it shall hold its sitting. Sub-section (9) of Section 8 says that School Tribunal shall for the purposes of disposal of an appeal preferred under this Act have the same powers as are vested in a court of appeal by the Code of Civil Procedure, 1908, and shall also have the power to stay the operation of any order appealed against on such terms as it may think fit. Sub-section (10) of Section 8 says that the order of the School Tribunal made in any appeal preferred under Section 4 shall be final. Section 9 of the Act bars the jurisdiction of civil Courts in respect of any matter in relation to which the State Government or the Director is empowered by or under the Act to exercise any power, and no injuction shall be granted by any civil Court in respect of anything which is done or intended to be done by or under the Act. Section 10 says that no suit prosecution or other legal proceedings shall lie against the State

Government or the Director for anything which is in good faith done or intended to be done in pursuance of the Act or any rule made thereunder. Section 11 says that without prejudice to any other action, that may be taken under any other provision of the Act, the failure to carry out any orders of the School Tribunal or of any direction of the Director under this Act, the State Government may take such action as it may think fit including stoppage of the grant-in-aid. Section 12 says that any person who is entrusted with the management of the affairs of a privately managed recognised school omits or fails, without any reasonable excuse to carry out any orders made by the School Tribunal shall be punishable with imprisonment which may extend to one thousand rupees or with both. Section 13 relates to offences by Companies and it says that where an offence under the Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. The proviso to this section says that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence. Sub-section (2) of Section 13 says that notwithstanding anything contained in sub-section (1), where any offence under the Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributed to, any neglect on the part of any director manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. The Explanation to Section 13 says that "company" means any body corporate and includes a firm or other association of individuals and "director" in relation to a firm, means a partner in the firm. Section 14 relates to the removal of difficulties, if any, which arise in giving effect to the provisions of the Act and empowers the State Government to remove them by passing order not inconsistent with the provisions of the Act and no such order can be issued after the expiry of a period of two years from the commencement of the Act. Section 15 relates to the rule-making power of the State Government for carrying out the purposes of the Act.

(9) Before answering, whether any of the statutory provisions of the Act as a whole or partly are in the shape of regulatory

measures made to ensure the appointment of a good teacher and their conditions of service or other allied matters or are in infringement of the right granted under Article 30(1) of the Constitution, we may briefly refer to some of the decided cases where similar problem came up for consideration before the apex Court. The earlier in point of time is the decision rendered *In re Kerala Education Bill* (8). This decision was rendered in exercise of its advisory jurisdiction under Article 143 of the Constitution. The question considered was :—

> "Do sub-clause (5) of clause 3, sub-clause (3) of clause 8 and clauses 9 to 13 of the Kerala Education Bill. or any provisions thereof, offend clause (1) of Article 30 of the Constitution in any particulars or to any extent ?"

The grievances of the minorities are stated in para 29 of the reported judgment and it reads thus :—

> "The gist of the right of administration of a school is the power of appointment, control and dismissal of teachers and other staff. But under the said Bill such power of management is practically taken away. Thus the manager must submit annual statements (Cl. 5). The fixed assets of the aided schools are frozen and cannot be dealt with except with the permission of the authorised officer (Cl. 6). No educational agency of an aided school can appoint a manager of its choice and the manager is completely under the control of the authorised officer, for he must keep accounts in the manner he is told to do and to give periodical inspection of them and on the closure of the school the accounts must be made over to the authorised officer (Cl. 7). All fees etc. collected will have to be made over to the Government [Cl. 8(3)]. Government will take up the task of paying the teachers and the non-teaching staff (Cl. 9). Government will prescribe the qualification of teachers (Cl. 10). The schools authorities cannot appoint a single teacher of their choice, but must appoint persons out of the panel settled by the Public Service Commission (Cl. 11). The school authorities must provide amenities to teachers and cannot dismiss, remove, reduce or even suspend a teacher without the previous sanction of the authorised officer (Cl. 12) Government may take over the management on being

(8) 1957, A.I.R. 1958 S.C. 956.

satisfied as to certain matters and can then acquire it outright (Cl. 14) and it can also acquire the aided School, again on its satisfaction as to certain matters on which it is easily possible to entertain different views (Cl. 15). Clause 20 permptorily prevents a private school, which means an aided or recognised school, from charging any fees for tuition in the primary classes where the number of scholars are the highest. Accordingly they contend that those provisions do offend the fundamental rights conferred on them by Art. 30(1)."

and the answer to this question was given in para 36 and it reads thus :—

"In accordance with the foregoing opinion we report on the question as follows :—

Question No. 1 : No.

Question No. 2 : (i) Yes, so far as Anglo-Indian educational institutions entitled to grant under Art. 337 are concerned. (ii) As regards other minorities not entitled to grant as of right under any express provision of the Constitution, but are in receipt of aid or desire such aid and also as regards Anglo-Indian educational institutions in so far as they are receiving aid in excess of what are due to them under Art. 337, clauses 8(3) and 9 to 13 do not offend Art. 30(1) but clause 3(5) in so far as it makes such educational institutions subject to clauses 14 and 15 do offend Art. 30(1). (iii) Clause 7 [except sub-clauses (1) and (3) which apply only to aided schools] and Clause 10 in so far as they apply to recognised schools to be established after the said Bill comes into force do not offend Art. 30(1) but clause 3(5) in so far as it makes the new schools established after commencement of the Bill subject to clause 20 does not offend Art. 30(1)."

(10) In *Rev. Father W. Proost* v. *State of Bihar* (9), question before the apex Court was whether the protection of Article 30(1) of the Constitution is available to minority institutions which are founded to conserve language, script or culture of minorities only as provided in Art. 29 or whether the protection is available to minorities who are running general educational institutions like

(9) A.I.R. 1969 S.C. 465.

schools and colleges. The apex Court came to the conclusion that the right to conserve language, script or culture is contained in Article 29 while separate rights are conferred by Article 30 under which minorities can run regular educational institutions.

(11) In *State of Kerala* v. *Very Rev. Mother Provincial, etc.*, (10), the apex Court struck down as *ultra vires* of Article 30 of the Constitution of India and Sections 48 and 49 of the Kerala University Act, 1969 whereby it conferred on the Syndicate the power to veto the action of the Managing Council of minority institutions in selecting teachers and also provided for an appeal to the Syndicate by a person aggrieved of the action of the governing body or managing council in disciplinary matters. It also struck down the powers of the Vice-Chancellor and the Syndicate in sub-sections (2) and (4) of Section 56 of the Kerala University Act, which took away the disciplinary action from the minority administration and conferred it upon the University. Further, Section 63 of that Act which provided power to regulate the management of private college was also held *ultra vires* Article 30 of the Constitution.

(12) In *Rt. Reve. Bishop S. K. Patro and others* v. *State of Bihar and others* (11), the order passed by the educational authorities requiring the Secretary of the Church Missionary Society Higher Secondary School to take steps to constitute a Managing Committee in accordance with Government order dated May 22, 1967 and setting aside the election of President and Secretary was held by the apex Court to be invalid in view of the provisions of Article 30 of the Constitution.

In *D.A.V. College, Jullundur etc.*, v. *The State of Punjab and others* (12), some provisions of Guru Nanak Dev University, Amritsar Act, 1969 were challenged as being violative of Article 30(1) of the Constitution of India. Sub-sections (2) and (3) of Section 4 of that Act provided that the University shall edeavour for promoting studies and research on the life and teachings of Guru Nanak and to promote research and development of Punjabi language. The apex Court came to the conclusion that there was nothing to compel the minority affiliated colleges to study teachings of Guru Nanak or to adopt in any way the culture of the Sikhs by them. These provisions were upheld. However, the provisions providing for constitution of the governing body with approval of the University Senate,

(10) A.I.R. 1970 S.C. 2079.
(11) A.I.R. 1970 S.C. 259.
(12) A.I.R. 1971 S.C. 1737.

the provisions providing for approval of the Vice-Chancellor for all appointments of the staff and subsequent changes in it were struck down as interfering with rights of minorities under Art. 30(1). *However, the provisions enabling the University to provide by regulations governing the service and conduct of teachers in larger interest of the institutions to ensure academic efficiency and excellence were upheld.*

In *The Ahmedabad St. Xavires College Society and another etc.* v. *State of Gujarat and another* (13), the provisions providing that teaching and training shall be conducted by the Gujarat University and shall be imparted by the teachers of the University and that all colleges affiliated to the University were upheld by the apex Court. However, the provisions providing representations of the Vice-Chancellor and teachers, non-teaching staff and students on the governing body of the college, provisions to the effect that dismissal, removal, etc. shall not be without conducting enquiry and approval of the Vice-Chancellor before inflicting punishment, provision regarding reference of any dispute between the governing body and any member of the teaching or non-teaching staff to a Tribunal or arbitrator, which included a representative of the Vice-Chancellor, were held to be interfering in the right of administration by the minorities guaranteed to them by Article 30(1) of the Constitution of India and were held to be inapplicable to the minority institutions.

(13) In *Lily Kurian* v. *Sr. Lewina and others* (14). Ordinance 33(1) and (4), Chapter 57 of the Ordinances framed by the Syndicate of University of Kerala under Section 19(j) of Kerala University Act, 1957 was challenged as being violative of the rights guaranteed to religious minorities under clause (1) of Article 30 of the Constitution of India. Under the impugned Ordinance, a teacher placed under suspension could resort to right of appeal to the Vice-Chancellor against the order of suspension. Similarly, any teacher had the right of appeal against any of the specified penalties imposed on him. The apex Court, relying on *The Ahmedabad St. Xaviers College Society* v. *State of Gujarat and another* (15), held that the grant of unlimited appellate powers to the Vice-Chancellor was bad

(13) A.I.R. 1974 S.C. 1389.
(14) 1979 (2) S.C.C. 124.
(15) A.I.R. 1974 S.C. 1389.

and grant of such a blanket power directly interfered with the disciplinary control of the Managing Body of minority institution over its teachers and that the right guaranteed by Article 30(1) of the Constitution would be a teasing illusion, a promise of unreality. The apex Court held that the impugned ordinances would not be applicable to minority institutions who are protected under Article 30(1) of the Constitution.

(14) The apex Court in the judgment reported as *The All Saints High School etc.* v. *The Government of Andhra Pradesh and others* (16), once again reiterated the earlier view taken by it that the provisions which provide that no teacher of private educational institution be dismissed, removed or reduced in rank or his services be terminated except with the prior approval of the competent authority were *ultra vires* of Article 30(1) of the Constitution of India and that the minority institutions cannot be proceeded against for violation of such provisions. Besides, the apex Court, after exhaustive analysis of its earlier authorities during the last two decades summarised the principles and proposition in regard to the safeguards and protection quaranteed under Article 30(1). These principles are contained in para 65 of the judgment and read thus :—

> "Thus, on an exhaustive analysis of the authorities of this Court and the views taken by it from time to time during the last two decades on various aspects, shades and colours, builtin safeguards, guarantees, scope and ambit of the fundamental right enshrined in Article 30(1), the principles and propositions that emerged may be summarised as follows :—
>
> 1. That from the very language of Article 30(1) it is clear that it 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.
> 2. 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.

(16) A.I.R. 1980 S.C. 1042.

3. 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.

4. 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 Art. 30(1) and would be wholly applicable to the institution concerned.

5. Although Art. 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.

6. The introduction 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 Art. 30(1) of the Constitution and would reduce the management to a helpless entity having no real say in the matter and thus destory 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 overshadow 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.

7. 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 instil confidence in the founders of the institution or the committees constituted by them.

8. Where a minority institution is affiliated to a University the fact that it is enjoined to adopt the courses of study or the syllabi or the nature of books prescribed and the holding of examination to test the ability of the students of the institution concerned does not violate the freedom contained in Art. 30 of the Constitution.

9. While there could be no objection in setting up a high authority to supervise the teaching staff so as to keep a strict vigilance on their work and to ensure the security of tenure for them, but the authority concerned must be provided with proper guidelines under the restricted field which they have to cover. Before coming to any decision which may be binding on the Managing Committee, the Head of the institution or the senior members of the Managing Committee must be associated and they should be allowed to have a positive say in the matter. In some cases the outside authorities enjoy absolute powers in taking decisions regarding the minority institutions without hearing them and these orders are binding on the institution. Such a course of action is not constitutionally permissible so far as minority institution is concerned because it directly interfers with the administrative autonomy of the institution. A Provision for an appeal or revision against the order of the authority by the aggrieved member of the staff alone or the setting up an Arbitration Tribunal is also not permissible because Ray C.J. pointed out in St. Xaviers case (supra) that such a course of action introduces an arena of litigation and would involve the institution in unending litigation, thus imparing educational officiency of the institution and create a new field for the teachers and thus draw them out of purely educational atmosphere of the minority institution for which they had been established. In other words, nothing should be done which would seek to run counter to the intentions of the founders of such institutions."

(14) *In Frank Anthony Public School Employees' Association* v. *Union of India and others* (17). the apex Court held that requirement of Section 10 of the Delhi School Education Act. 1973 (for short the Act) that scales of pay and allowances of the employees of recognised private schools shall not be less than those of the employees of the schools being run by the State was justified and aimed at safeguarding educational institutions. However, the provisions of sub-section (2) of Section 8 of the Act, which required prior approval of the Director for dismissal. removal reduction in

(17) A.I.R. 1987 S.C. 311.

rank or imposition of penalty of termination of service of an employee of a recognised private school was struck down as offending Article 30(1) of the Constitution of India. Provisions of sub-section (3) of Section 8 providing for appeal against penalties of dismissal, etc. to a School Tribunal comprising of a District Judge was upheld on the ground that it was not to a departmental officer but to a Tribunal. Provisions of sub-section (4) of Section 8 providing for approval of an order of suspension by the Director were upheld by holding that (i) prior approval was not needed; (ii) the Director was bound to accord approval if there were adequate and reasonable grounds for suspension. Provisions of Section 12 of the Delhi Act distinquishing between aided minority institutions and unaided minority institutions were quashed being discriminatory.

(15) In *Mrs. Y. Theclamma* v. *Union of India and others* (18), the apex Court upheld the prescription of a fair procedure in the matter of disciplinary action and also upheld the provisions of the Delhi Act providing for prior permission of the Education Officer before suspending a teacher.

(16) In *The Governing Body, St. Anthony's College, Shillong and others* v. *Rev. Fr. Paul, Petta of Shillong East Khasi Hills* (19), the Principal of the St. Anthony's College run by Salesian congregation, a Catholic Religious Society a minority institution, was transferred and posted as a teacher. He filed a suit challenging the transfer contending that he had a statutory, right to hold the post of Principal and that the order of transfer was illegal as it amounted to removal from the post of Principal and had been issued without recording any reason or giving him an opportunity to show cause against it. The apex Court held that since the respondent (Principal) had not been given an opportunity of hearing against the purported order of transfer which seriously affected his status. the order of the High Court directing the College to give the respondent (Principal) an opportunity to show cause against his transfer give him an opportunity of hearing and decide the matter afresh could not be faulted. Thus, the apex Court held that the principles of natural justice would be applicable even *qua* minority institutions.

(17) In *All Bihar Christian Schools Association and another* v. *State of Bihar and others* (20), the apex Court upheld the validity

(18) A.I.R. 1987 S.C. 1210.

(19) A.I.R. 1988 S.C. 2005.

(20) A.I.R. 1980 S.C. 305.

of the Bihar Non-Government Secondary Schools (taking over of management and Control) Act, 1982. This Act provided that if the management of a School finds it difficult to manage the school, instead of closing it down, it may hand over the control and management of the Institution to the State. The Act was held to be merely an enabling legislation to take over the control and management of a minority institution on an offer made by the management and hence not violative of Article 30(1). Further Section 18(3) laying down terms and conditions for grant of recognition to a minority school were held to be regulatory in nature which seek to secure excellence in education and efficiency in management and hence not violative of Article 30(1) of the Constitution.

(18) In *State of Tamil Nadu and others* v. *St. Joseph Teachers Training Institute and another* (21), the apex Court held that the State has a right to prescribe regulatory provisions for ensuring educational excellence. Minority institutions which do not seek recognition are free to function according to their own choice, but if such an institution seeks recognition from the State, it has to comply with the prescribed conditions for granting recognition, viz, to follow prescribed syllabus for examination, courses of study and other allied matters. It has no right to insist upon the State to allow students to appear at the Public examinations without recognition or without complying with the conditions prescribed for such recognition.

(19) In *St. Stephen's College, etc.* v. *The University of Delhi etc.* (22), the question before the apex Court was as to whether a minority institution is bound by the provisions of the University circulars directing that the College shall admit students on the basis of merit of the percentage of marks secured by the students in the qualifying examination or whether the College could have its own admission programme based on the interview. The apex Court held that the College could frame its own criteria for grant of admission. It further held that the financial aid by the State cannot affect the rights of minority under Article 30 of the Constitution. Dealing with the question whether the minority institutions have a right to give preference to students of their own community *vis-a-vis* the other, the apex Court held that the aided minority

(21) 1991 (2) S.L.R. 605.
(22) A.I.R. 1992 S.C. 1630.

educational institutions are entitled to prefer their community candidates to maintain the minority character of the institution (subject to conformity with he University standard), but in no case such intake shall exceed 50 per cent of annual admissions to members of a community other than the minority community. Admission of other community candidates shall be done purely on the basis of merit.

(20) This court had the occasion to deal with somewhat identical matter in *Managing Committee of Kanya Maha Vidyalaya, Jullundur* v. *The State of Punjab and others* (23). In this case a Division Bench of this Court held that while the State or other statutory authorities had no right to interfere with the internal administration or management of minority institutions, the State can certainly prescribe regulatory measures to promote efficiency of educational standard and issue guidelines for the purpose of ensuring security of service of employees. At the same time the State or other authority cannot, under the garb of regulatory measures, interfere in the administrative autonomy of the institutions. Holding this, the order of the Director of Public Instruction (Colleges) Punjab holding the removal of the Principal to be a dismissal and hence violative the provisions of the Punjab Affiliated Colleges (Security of Service of Teachers) Act, 1974 was held to be illegal being violative of Article 30 of the Constitution. However, it further held that the institution would be bound by the condition of affiliation and measures which regulate courses of study, qualification and appointment of teachers, the conditions of employment of teachers, health and hygiene of students facilities for library and laboratory to be regulatory measures for affiliation, uniformity and efficiency in education and hence *intra vires* Act, 30 of the Constitution. The provisions of the Act pertaining to procedure to be followed for dismissal etc. was held applicable to minority institutions and the order of termination of the permanent Principal was held to be illegal on account of non-compliance with the procedure prescribed under the Act.

(21) In *S.M.D. R.S.D. College Society, Pathankot* v. *The Director of Public Instructions (Colleges), Punjab, Chandigarh and others* (24), learned Single Judge of this Court held that the provisions of Section 4 of the Punjab Act saying that the penalty of dismissal or removal from service shall not be imposed unless the same is

(23) 1986 (2) S.L.R. 415.
(24) 1988 (1) S.L.R. 229.

approved by the Director and any person aggrieved against the order of the Director either granting or refusing it could assail that conclusion before the College Tribunal was *ultra vires* Article 30 of the Constitution. The judgment rendered by the learned Single Judge was challenged in L.P.A. No. 237 of 1987. *The Managing Committee of S.M.D. R.S.D. College Society* v *K. L. Saggar* and the Letters Patent Bench in its judgment rendered on September 24, 1991, observed thus :—

> "The learned counsel appearing for the State of Punjab and the Principal in the connected appeals argued that the view of the learned Single Judge holding Section 4 to be violative of Article 30(1) of the Constitution of India was not correct. The question in the facts of this case is only academic and is left open to be agitated in an appropriate proceedings.
>
> "The observations of the learned Single Judge made in that behalf will not bind the parties to this litigation and shall not be taken as an expression of opinion in that behalf."

In the light of this, the conclusion by the learned Single Judge that Section 4 of the Punjab Act is violative of Article 30 of the Constitution is of no consequence and the decision is no more a good law.

(22) Brief review of the provisions of the Punjab Act except the provisions contained in sub-section (1) of Section 4 saying that no employee shall be dismissed, removed or reduced either in rank or without a time scale except with the prior approval of the Director would show that these are made for ensuring proper conditions of service of the teachers and for securing a fair procedure in the matter of disciplinary action against teachers. Such provisions which are calculated to safeguard the interests of teachers would result in security of tenure and thus inevitably attract competent persons for the posts of teachers. Such a provision would also eliminate the potential cause of frustration amongst the teachers. Regulations for this purpose should be considered to be in the interests of minority institutions and thus they would not violate Article 30(1) of the Constitution. 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 under Article 30 of the Constitution they secure the proper functioning of the instutition, in matters of education. [See in this connection observations of Khanna, J. in *St. Xaviers College* case (supra) at page 1421-22].

(23) The validity of almost identical provisions of the Delhi School Education Act, 1973 (for short, the Delhi Act) except those which are on the lines of Section 4(1) of the Punjab Act was upheld by the apex Court in *Frank Anthony Public School Employees' Association* v. *Union of India and others* (25). Section 10 of the Delhi Act which provides that the scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of a recognised private school shall not be less than those of the employees of the corresponding status in schools run by the appropriate authority. Section 12 says that the provisions of Chapter IV (comprising Section 8 to 11) shall not be applicable to an unaided minority school. The employees of the recognised private schools and government schools were getting higher scales of pay than those of Frank Anthony Public School. Frank Anthony Public School Employees' Association challenged the validity of Section 12 of the Delhi Act and it was in this context that the apex Court had to review the entire provisions of the Delhi Act. Section 12 to the extent it made the provisions of Section 10 in applicable to the unaided minority institutions was held to be discriminatory. It will be relevant to refer to the following observations in para 16 of the reported judgment :—

> "Apart from the learned Judges who constituted the Nine Judge Bench, other learned Judges have also indicated the same view. In the leading case of *Kerala Education Bill*, (A.I.R. 1958 S.C. 956) the Constitution Bench observed that, as then advised, they were prepared to treat the clauses which were designed to give protection and security to the ill paid teachers who were engaged in regarding service to the nation as permissible regulations. The observations were no doubt made in connection with the grant of aid to educational institutions but they cannot make any difference since aid, we have seen, cannot be made conditional on the surrender of the right guaranteed by Article 30(1). In the *State of Kerala* v. *Mother Provincial* (supra) it was said that to a certain extent the State may regulate

(25) A.I.R. 1987 S.C. 311.

conditions of employment of teachers. In *All Saints High School* v. *Government of Andhra Pradesh* (27), Chandrachud, C.J. expressly stated that for the maintenance of educational standards of an institution it was necessary to ensure that it was competently staffed and, therefore, conditions of service prescribing minimum qualifications for the staff, their pay-scales, their entitlement, other benefits of service and the safeguards which must be observed before they were removed or dismissed from service or their services terminated were permissible measures of a regulatory character. Kailasam, J. expressed the same view in almost identical language. We, therefore, hold that Section 10 of the Delhi Education Act which requires that the scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of a recognised private school shall not be less than those of the employees of the corresponding status in schools run by the appropriate authority and which further prescribes the procedure for enforcement of the requirement is a permissible regulation aimed at attracting competent staff and consequently at the excellence of the educational institution. It is a permissible regulation which in no way detracts from the fundamental right guaranteed by Art. 30(1) to the minority institutions to administer their educational institutions. Therefore, to the extent that Section 12 makes Section 10 inapplicable to unaided minority institutions, it is clearly discriminatory."

Sections 4(1), 4(2), 5, 6, 7 and of the Punjab Act are almost in identical terms with those of Section 8(2), 8(3), 8(4), 8(5), 9, 10 and 11 of the Delhi Act and these read as under :—

Punjab Act	Delhi Act
6. *Suspension of employees.*— may be made in this behalf, no employee shall be dismissed, removed or reduced either in within a time scale nor shall	8. (2) Subject to any rule that may be made in this behalf, no employee of a recognised private school shall be dismissed, removed or reduced in

(27) A.I.R. 1980 S.C. 1042.

Punjab Act	Delhi Act
his services be otherwise terminated except with the prior approval of the Director.	rank nor shall his services be otherwise terminated except with the prior approval of the Director.
4. (2) Any employee who is dismissed, removed or reduced either in rank or within a time scale under sub-section (1) may, within three months from the date of communication to him of the order of such dismissal, removal or reduction, appeal against such order to School Tribunal.	(3) Any employee of a recognised private school who is dismissed, removed or reduced in rank may, within three months from the date of communication to him of the order of such dismissal, removal or reduction in rank, appeal against such order to the Tribunal constituted under Section 11.
5. *Suspension of employees.* — No employee shall be kept under suspension for a period *exceeding six months* without prior approval of the Director.	8. (4) Where the managing committee of a recognised private school intends to suspend any of its employees such intention shall be communicated to the Director and no such suspension shall be made except with the prior approval of the Director : Provided that the managing committee may suspend an employee with immediate effect and without the prior approval of the Director if it is satisfied that such immediate suspension is necessary by reason of the gross misconduct, within the meaning of

Punjab Act	Delhi Act
	the Code of Conduct prescribed under section 9, of the employee : Provided further that no such immediate suspension shall remain in force for more than a period of *fifteen days* from the date of suspension unless it has been communicated to the Director and approved by him before the expiry of said period.
	8. (5) Where the intention to suspend, or the immediate suspension of, an employee is communicated to the Director, he may, if he is satisfied that there are adequate and reasonable grounds for such suspension, accord his approval to such suspension.
6. *Employees to be governed by a Code of Conduct.*—	9. *Employees to be governed by a Code of Conduct.*—
Every employee shall be Governed by such Code of Conduct as may be prescribed and on the violation of any provision of such Code of Conduct the employee shall be liable to such disciplinary action as may be prescribed.	Every employee shall be Governed by such Code of conduct as may be prescribed and on the violation of any provision of such Code of Conduct, the employee shall be liable to such disciplinary action as may be prescribed.

Punjab Act	Delhi Act
7. *Salaries of employees.*	10. *Salaries of employees.*—
Notwithstanding anything contained in section 3, the scale of pay and dearness allowance of the employees shall not be less than those of the employees of the State Government holding corresponding posts in the schools run by the State Government :	(1) The scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of a recognised private school shall not be less than those of the employees of the Corresponding status in schools run by the appropriate authority :
Provided that where the scales of pay and dearness allowance of the employees are less than those of the employees of the State Government holding corresponding posts in the schools run by the State Government, the Director shall direct are the concerned managing committee to bring the same at par with those of such employees.	Provided that where the scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of any recognised private school are less than those of the employees of the corresponding status in the schools run by the appropriate authority, the appropriate authority shall direct, in writing, the managing committee of such school to bring the same up to the level of those employees of the corresponding status in schools run by the appropriate authority :
	Provided further that the failure to comply with such direction shall

Punjab Act	Delhi Act
	be deemed to be non-compliance with the conditions for continuing recognition of an existing school and the provisions of section 4 shall apply accordingly.
	(2) ... ...
8. *School Tribunal.*	11. *Tribunal.*
(1) The State Government may, by notification, constitute one or more School Tribunals for the purposes of this Act for such area as may be specified in such notification.	(1) The Administrator shall, by notification, constitute a Tribunal, to be known as the "Delhi School Tribunal," consisting of one person :
	Provided that no person shall be no appointed unless he has held office as a District Judge or any equivalent judicial office.
(2) A School Tribunal shall consist of one person only to be appointed by the State Government.	
(3) A person shall not be qualified for appointment as a Presiding Officer of a School Tribunal unless he is or has been a Judge of the High Court or an Officer of the State Government not below the rank of a Commissioner of a Division.	
(4) — — — —	
(5) If any vacancy, other than a temporary absence, occurs in the office of the Presiding Officer	(2) If any vacancy, other than a temporary absence, occurs in the office of the presiding officer

Punjab Act	Delhi Act
of a School Tribunal the State Government shall appoint another person in accordance with the provisions of this section, to fill the vacancy and the proceedings may be continued before the School Tribunal from the state at which the vacancy is filled.	of the Tribunal, the Administrator shall appoint another person, in accordance with the provisions of this section, to fill the vacancy and the proceedings may be continued before the Tribunal from the stage at which the vacancy is filled.
(6) The State Government shall make available to the School Tribunal such staff as may be necessary in the discharge of its functions under this Act.	(3) The Administrator shall make available to the Tribunal such staff as may be necessary in the discharge of its functions under this Act.
(7) All expenses incurred in connection with the School Tribunal shall be borne by the State Government.	(4) All expenses incurred in connection with the Tribunal shall be defrayed out of the Consolidated Fund of India.
(8) The School Tribunal shall have the power to regulate its own procedure in all matters arising out of the discharge of its functions including the place or places at which it shall hold its sittings.	(5) The Tribunal shall have power to regulate its own procedure in all matters arising out of the discharge of its functions including the place or places at which it shall hold its sittings.
(9) The School Tribunal shall for the purposes of disposal of an appeal preferred under this Act have the same powers as are vested in a Court of appeal by the Code of Civil Procedure, 1908,	(6) The Tribunal shall for the purpose of disposal of an appeal preferred under this Act, have the same powers as are vested in a court of appeal by the Code of Civil Procedure, 1908, 5

and shall also have the power to stay the operation of any order appealed against on such terms as it may think fit.	of 1908 and shall also have the power to stay the operation of the order appealed against on such terms as it may think fit.
(10) The order of the School Tribunal made in any appeal preferred under section 4 shall be final.	xx xx xx

(24) Dealing with the vires of the provisions under the Delhi Act in *Frank Anthony Public School Employees' Association* case (supra), the apex Court in para 18 of the judgment observed thus:—

> "Keeping in mind the views of the several learned judges, it becomes clear that *Section 8(2) must be held to be objectionable.* Section 8(3) provides for an appeal to the Tribunal constituted under Section 11, that is, a Tribunal consisting of a person who has held office as a District Judge or any equivalent Judicial office. The appeal is not to any departmental official but to a Tribunal manned by a person who has held office as a District Judge and who is required to exercise his powers not arbitrarily but in the same manner as a Court of appeal under the Code of Civil Procedure. The right of appeal itself is confined to a limited class of cases, namely, those of dismissal, removal or reduction in rank and not to every dispute between an employee and the management. The limited right of appeal, the character of the authority constituted to hear the appeal and the manner in which the appellate power is required to be exercised make the provision for an appeal to be exercised make the provision for an appeal perfectly reasonable, in our view."

The provisions of Section 8 of the Delhi Act except sub-section (2) thereof were upheld by the apex Court. The objection regarding sub-section (2) of Section 8 requiring prior approval of the Director for the dismissal, removal, reduction in rank or termination of services of an employee of a recognised private school was upheld on

the ground that it interfered with the rights of the minorities under Article 30(1) of the Constitution.

(25) After analysing the provisions of Section 8 of the Delhi Act, the apex Court held thus :—

> "Thus, Sections 8(1), 8(3), 8(4) and 8(5) do not encroach upon any right of minorities to administer their educational institutions. Section 8(2), however, must, in view of the authorities, be held to interfere with such right and, therefore, inapplicable to minority institutions. Section 9 is again innocuous since Section 14 which applies to unaided minority schools is virtually on the same lines as Section 9. We have already considered Section 11 while dealing with Section 8(3). We must, therefore, hold that Section 12 which makes the provisions of Chapter IV inapplicable to the unaided minority schools is discriminatory not only because it makes Section 10 inapplicable to the minority institutions but also because it makes Sections 8(1), 8(3), 8(4), 8(5), 9 and 11 inapplicable to unaided minority institutions. That the Parliament did not understand Sections 8 to 11 as offending the fundamental right guaranteed to the minorities under Article 30(1) is evident from the fact that Chapter IV applies to aided minority institutions and it cannot for a moment be suggested that surrender of the right under Article 30(1) is the price which the aided minority institutions have to pay to obtain aid from the Government.

(26) The result of our discussion is that Section 12 of the Delhi School Education Act which makes the provisions of Chapter IV inapplicable to unaided minority institutions is *discriminatory and void except to the extent that it makes Section 8(2) inapplicable to the unaided minority institutions.* We, therefore, grant a declaration to that effect and direct the Union of India and the Delhi Administration and its officers, to enforce the provisions of Chapter IV [except Section 8(2)] in the manner, "provided in the Chapter in the case of the Frank Anthony Public School."

A right of appeal provided for under sub-section (2) of Section 4 of the Punjab Act to an employee who has been dismissed, removed or reduced either in rank or within a time scale to the School Tribunal is upheld on the same parity of the reasoning as given by the apex Court in *Frank Anthony Public School Employees' Association* case (supra).

(27) From the analysis of the judgments, it emerges that under Article 30 of the Constitution, minorities whether based on religion or language, have fundamental freedom to establish educational institutions of their own choice, but the State has a right to prescribe regulatory legislation securing conditions and security of service of teachers and other employees and ensuring education excelience. This will include provisions governing the conditions of service of teachers and their security of service and providing for effective measures to ensure compliance with the same. Minorities which do not seek recognition of the educational institution run by them from the State are free to function according to their own choice, but if such an institution seeks recognition from the State, it has to comply with the conditions prescribed for granting recognition and in that event, the minority institution has to follow the prescribed syllabus for examination, course of study and other allied matters.

(28) As regards the provisions of Sections 11 and 12 of the Punjab Act in so far as they pertain to the initiation of any penal action against the schools governed by the Punjab Act, no specific challenge to any of adverse orders has been made in the writ petition. These sections contain only general provisions to be exercised in exceptional cases on proof of facts justifying the action. The exercise of these powers pre-supposes that it had to be exercised to secure proper functioning of the minority institutions in matters of educational and other allied matters. These powers cannot be exercised which in any manner will impinge upon the right of the minority ensured under Art. 30(1) of the Constitution.

(29) The question posed is answered thus :

The minorities, whether based on religion or language, have the right to establish and administer educational institution. Although the right conferred on the minority by Article 30(1) of the Constitution is absolute and unconditional but this does not give them a licence to mal administration. The State or any other statutory authority has no right to interfere with the internal administration or management of the minority institution, but it can certainly take regulatory measures to promote the efficiency of educational standards and frame regulations for the purposes of ensuring the security of service of teachers and other employees of the institution, discipline and fairness in administration. The provisions of the Punjab Act except contained in sub-section (1) of Section 4 are

permissible regulations made for the purpose of safeguarding the right of the staff of a privately managed recognised school. The provisions contained in sub-section (1) of Section 4 of the Punjab Act impinge upon the right of minorities under Art. 30(1) of the Constitution. This provision is inapplicable to the unaided minority institutions. Provision of sub-section (3) of Section 4 of the Punjab Act is rendered redundant for the reason that sub-section (1) of Section 4 has been held to be *ultra vires* of Article 30(1) of the Constitution.

(30) The challenge in the writ petition is to the order of the School Tribunal holding that the appeal before it was incompetent. The order of the Tribunal cannot be sustained on any ground. Even if it is held that the school is a religious minority institution within the meaning of Article 30(1) of the Constitution, the right of appeal ensured under sub-section (2) of Section 4 has been safeguarded. The validity of this provision has been upheld. The Tribunal was in error in holding that the appeal was incompetent. If the school is a privately managed recognised school receiving grant-in-aid from the State, the petitioner has got a statutory remedy of appeal under sub-section (2) of Section 4 of the Punjab Act. Looking into the matter from any angle, the petitioner's right of appeal against termination of his services is maintainable. We accordingly set aside the order of the School Tribunal dated September 8, 1987 and direct the Tribunal to dispose of the appeal afresh in accordance with law. The petitioner through his counsel is directed to appear before the School Tribunal on October 16, 1992. The Tribunal shall thereafter dispose of the appeal expeditiously and not later than November 6, 1992. In the circumstances of the case, we make no order as to costs.

R.N.R.

Before : G. C. Gara & A. L. Bahri, JJ.

SATYA PAL SIKKA.—*Petitioner.*

versus

STATE OF HARYANA AND ANOTHER.—*Respondent.*
C.W.P. 2280 of 1993.

April 7, 1993

Constitution of India, 1950—Article 226—Prevention of Corruption Act—Section 13(1) (d)—Haryana Civil Services Punishment and Appeal Rules, 1987—Compulsory retirement—Departmental