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# EDUCATION LAW

*M P Raju*[1]

## I INTRODUCTION

> "Soap and education are not as sudden as a massacre, but they are more deadly in the long run."( Mark Twain in *A Curious Dream*:1872)
> "Learning is the true imperishable riches;
> all other things are not riches" –Thirukkural (400)

THE LAW and judicial verdicts in the are a education during the year under survey touch upon all the aspects of education affecting all the concerned players who can broadly be classified as education-seekers, education-givers and minorities - religious or linguistic. All the main issues related to education have been the subject matter of leading decisions by the apex court and various high courts. The courts have cleared the confusion created on the issues of access to education and reservation for weaker sections of the society in professional colleges. The issue of fee fixation also received its share of attention. In the area of examinations, the legal consequences of questions out of syllabus and malpractices by examinees were the subject matter of specific discussions. There was also an interesting question whether promotion in the same institution after a board examination was fresh admission or readmission. Further, the Supreme Court had an occasion to deal with the issues of equivalence of degrees by the different universities and validity of degrees of a non-university institution. The law relating to the establishment of educational institutions and their management was the subject matter of a number of decisions as usual. There were some important verdicts on the service conditions and disciplinary matters of teachers. The various facets of the rights of minority educational institutions were dealt with by various high courts as well as the Supreme Court.

## I ADMISSION TO EDUCATIONAL INSTITUTIONS

Dealing with the rights of education-seekers, the Supreme Court through

1 Advocate, Supreme Court and author of books including *Minority Rights: Myth or Reality* (2002); *Uniform Civil Code: A Mirage*? (2003); and *Education, A Mission in Jeopardy* (2005).

its activist interpretation had earlier found a fundamental right to receive education under article 21. This had been done at a time when the Constitution did not have any explicit provision like article 21A. Apart from this, the judiciary has been interpreting the extent of the rights of students in all education-related matters. During the year 2008 issue of access to education and reservation in admissions received an unprecedented impetus because of the liberal interpretation by courts.

**Reservation in admissions**

The democratic principle of participation and the secular motto of diversity got a great boost from the five judge verdict of the Supreme Court upholding the constitutional amendment providing reservation in admissions to professional colleges.

In *Ashoka Kumar Thakur* v. *Union of India*[2] the Supreme Court considered the validity of Constitution (Ninety-Third Amendment) Act, 2005 and the Central Educational Institutions (Reservation in Admission) Act, 2006 which provided for reservation in admission to educational institutions including private unaided institutions other than minority educational institutions. The constitution bench headed by the Chief Justice KG Balakrishnan has upheld the same as constitutionally valid. While upholding the principle of reservation to the weaker sections of the society in the field of education, the Chief Justice explained the rationale thus:[2a]

> In the context of education, any measure that promotes the sharing of knowledge, information and ideas, and encourages and improves learning, among India's vastly diverse classes deserves encouragement. To cope with the modern world and its complexities and turbulent problems, education is a must and it cannot remain cloistered for the benefit of a privileged few. Reservations provide that extra advantage to those persons who, without such support, can forever only dream of university education, without ever being able to realize it. This advantage is necessary.

The Chief Justice quoted the Constitution (Ninety-third Amendment) Act, 2005 which inserted clause (5) in article 15 of the Constitution:

> Nothing in this Article or in sub-clause (g) of clause (1) of Article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions,

2 (2008) 6 SCC 1.
2a *Id.* at 446.

whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of Article 30.

It was held (per KG Balakrishnan, CJI) that article 15(5) does not abrogate the fundamental right enshrined under article 19(1)(g). If at all there is an abridgement of fundamental right, it is in a limited area of admission to educational institutions and such abridgement does not violate the basic structure of the Constitution. In any way, constitutional amendments giving effect to directive principles of the state policy would not offend the basic structure of the Constitution.

The minority view of Dalveer Bhandari, J has held that the 93rd Amendment's imposition of reservation on unaided institutions has abrogated article 19(1)(g), a basic feature of the Constitution, in violation of our Constitution's basic structure. He, therefore, severed the 93rd Amendment's reference to "unaided" institutions as *ultra vires* the Constitution. According to the judge at least four problems would likely arise due to reservations in unaided private educational institutions: (1) academic standards would suffer; (2) attracting and retaining good faculty would become more difficult; (3) the incentive to establish a first rate unaided institution would be diminished; (4) and ultimately the global reputation of our unaided institutions would be severely compromised.

The majority view, however, is the one given by the Chief Justice of India reiterated by Arijit Pasayat and RVRaveendran, JJ, that clause (5) of article 15 is valid with reference to state maintained educational institutions and aided educational institutions. The question whether article 15(5) would be unconstitutional on the ground that it violates the basic structure of the Constitution by imposing reservation in respect of private unaided educational institutions was left open.

**Direction to enforce article 21 A**

In the *Ashok Kumar Thakur*, Dalveer Bhandari, J used the opportunity to issue certain directions to the central government for adopting a carrot-and-stick approach to implement article 21A of the Constitution of India. He directed that the central government should enact a legislation that: (a) provides low-income parents/guardians with financial incentives such that they may afford to send their children to school; (b) criminally penalizes those who receive financial incentives and despite such payment send their children to work; (c) penalizes employers who preclude children from attending school or completing homework; (d) the penalty should include imprisonment; the aforementioned Bill would serve as an example. The State is obligated under article 21A to implement free and compulsory education in toto; (e) until we have achieved the object of free and compulsory education, the government should continue to increase the education budget; (f) the Parliament should set a deadline by which time free and compulsory education will have reached every child. This must be done within six months.

Bhandari, J cautioned that the state cannot cite budgetary constraints or lack of resources as an excuse for failing to provide financial assistance/ incentives to poor parents. Even though these directions are not on behalf of the bench, but only a minority view, it would command its due respect especially since other judges of the bench are silent on this issue.

**Unholy handshake of student and college**

In today's cut throat competition to get admissions especially in professional colleges, there have been instances of collusion between colleges and ineligible students to circumvent and scuttle legal barriers.

In *Mahatama Gandhi University* v. *Gis Jose*[3] it was a case of irregular admission given by the college in M.Sc. Computer Science course in violation of admission rules framed by the university. The student admitted in college for the said course had secured only 53.3% marks in qualifying examination, whereas minimum requirement of cut-off marks fixed by the university was 55%. Application of the student for first and second semester examination was rejected by the controller of examination. Yet the college proceeded to allow her to write the examination of those semesters and also continued her admission. She was further allowed to complete her course. However, the university withheld the result. The writ petition filed by the student seeking declaration of withheld result was dismissed by the single bench. The division bench directed the university to declare the withheld result of student. The Supreme Court found that the order of division bench was wrong and based on misplaced sympathies and it restored the judgment of the single bench dismissing the writ petition. The Supreme Court held that it could not be assumed that the student did not have an idea of all these irregularities and that there was an unholy hand shake of student and college authorities.

**Shifting of colleges after admission process**

Shifting of colleges by students may have to be permitted in the interest of justice and convenience. But unless regulated and prevented after a particular stage, it can create unmanageable problems for all concerned.

In *State of Maharashtra* v. *Sneha Satyanarayan Agrawal*[4] it was held that claim for shifting from one college to another after the entire process of admission was over was unsustainable. The Supreme Court found that petitioner-student being less meritorious than other students could not be given seat at a particular college and the competent authority had strictly followed the relevant rules relating to admission and procedure of admitting students on the basis of merit list and preferences. The court further held that the direction of high court issued in favour of the candidate should not be implemented, particularly when cut-off date had already been over and no shifting of candidates at belated stage was permissible as per mandatory

3 2008 (12) SCALE 356.
4 2008(13) SCALE 102.

Medical Council of India's regulations. The court relied on its earlier decision in *Medical Council of India* v. *Madhu Singh and Others.*[5] and reiterated its ratio.

## II FEE FIXATION

During recent times, the line between charging reasonable fees and taking capitation fee has been blurring. In this context, the decision of the Supreme Court in *Cochin University of Science and Technology* v. *Thomas P. John*[6] assumes great importance. In that case, it was held that the matter relating to the fixation of a fee was a part of the administration of an educational institution and it would impose a heavy onus on such an institution to be called upon to justify the levy of a fee with mathematical precision.

An educational institution chalks out its own programme year wise on the basis of the projected receipts and expenditure and for the court to interfere in this purely administrative matter would be impinging excessively on this right. At the same time the Supreme Court cautioned that from this it should not be understood that the educational institution has a *carte blanche* to fix any fee that it likes though substantial autonomy must be left to it.

The court clarified that a student having accepted admission under a particular fee structure could not turn around and say at a later stage that the fee which was called upon to pay was excessive and that he was liable to pay such fee which was leviable on students admitted in subsequent years.

The court referred to its earlier decisions in *T.M.A.Pai Foundation* v. *State of Karnataka*[7]*; Islamic Academy of Education & Anr.* v. *State of Karnataka & Ors.*[8]*; P.A. Inamdar & Ors.* v. *State of Maharashtra & Ors.*[9]*; Om Prakash Shukla* v. *Akhilesh Kr. Shukla & Ors.*[10] and *Standard Chartered Bank* v. *Andhra Bank Financial Services Ltd. & Ors*[11].

In the present case the Cochin University had set up the self-financing B.Tech Course in the year 1995 and no grant in aid was available during this period or later and it had to make arrangements for its own funds. The court had also examined the budget estimates, receipts and expenditure from the year 1996-97 to 1999-2000 and found that there was a surplus in the hands of the institution but since a new course was being initiated which would require huge investments, the surplus was not unconscionable so as to require interference. According to the court, the university had made its

5 (2002) 7 SCC 258.
6 (2008) 8 SCC 82.
7 (2002) 8 SCC 481.
8 (2003) 6 SCC 697.
9 (2005) 6 SCC 537.
10 (1986) Supp SCC 285.
11 (2006) 6 SCC 94.

budget estimates keeping in view the proposed receipts and if the fee levied by it and accepted by the students was permitted to be cut down mid term on the premise that the university had not been able to explain each and every item to justify the levy, it would perhaps be impossible for it to function effectively.

The court also considered the submission that the fee had the trappings of a capitation fee and found no merit in that assertion, as the fee was being levied year wise for the course.

## III EXAMINATION

**Questions outside syllabus**

The conduct of all concerned in the matter of examination is crucial. As of today examination is the most important stage of the education process. The issues like questions coming out of the prescribed syllabus, the requirement of re-evaluation and the malaise of malpractices have been the subject matter of adjudication for long in a number of cases. The year 2008 also was not an exception.

In *N. Lokananandham* v. *Chairman, Telecom Commission*[12] it was held that it was for an expert body to clear the ambiguity in the prescribed syllabus and in the event it was found that any question was put out of syllabus, only those who could not answer the same would be entitled to any relief.

**Direction for re-evaluation**

In *Sahiti* v. *Chancellor, Dr. N.T.R. University of Health Sciences*[13] (KG Balakrishnan, CJ, P Sathasivam and JM Panchal, JJ, the last judge delivering the judgment, the Supreme Court held that even in the absence of a specific provision enabling the vice-chancellor to order re-evaluation of the answer scripts, the order for re-evaluation was perfectly legal and permissible. In such cases, what the court should consider is whether the decision of the educational authority was arbitrary, unreasonable, *mala fide* and whether the decision contravened any statutory or binding rule or ordinance and in doing so, the court should show due regard to the opinion expressed by the authority. However, in the circumstances, the court found that the order of re-evaluation of answer scripts were passed under pressure and coercion of students and without going into merits of allegations and hence were not sustainable.

The court has made a few relevant observations in the issue of re-evaluation of answers. Award of marks by an examiner has to be fair and considering the fact that re-evaluation is not permissible under the statute at the instance of candidate, the examiner has to be careful, cautious and has the duty to ensure that the answers are properly evaluated. Therefore, where the authorities find that award of marks by an examiner is not fair or that the

12 (2008) 5 SCC 155.
13 (2009) 1 SCC 599.

examiner was not careful in evaluating the answer scripts re-evaluation may be found necessary. There may be several instances wherein re-evaluation of the answer scripts may be required to be ordered and this court need not make an exhaustive catalogue of the same. However, if the authorities are of the opinion that re-evaluation of the answer scripts is necessary then the court would be slow to substitute its own views for that of those who are expert in academic matters.

**Malpractice in examination**

Unless the instances of malpractices during examinations are not strictly dealt with the purity of education will suffer and the standard of education will be a casualty. At the same time rule of law and justice should also be maintained.

In *Director (Studies)* v. *Vaibhav Singh Chauhan*[14] (Altamas Kabir and Markandey Katju, JJ) it was held that the high courts should not ordinarily interfere with the functioning and order of the educational authorities unless there was clear violation of some statutory rule or legal principle. It was also observed that there must be strict purity in the examinations of educational institutions and no sympathy or leniency should be shown to candidates who resort to unfair means in the examinations. In this case, the respondent was found in possession of a slip containing material relevant to examination while writing his answer in one of the subjects. Punishment of disqualification for one academic session was awarded. In the writ petition challenging the punishment, the single judge through an interim order allowed the respondent to appear in the examination with a direction not to declare his result till the order of the court. Later on the single judge directed the university to declare the result of the respondent holding that the punishment was disproportionate as he had shown remorse. The letters patent appeal also was dismissed. The Supreme Court found that the observation of the single judge in the interim order that the chit had not actually been used was wholly an irrelevant consideration as once it was found that the chit contained material pertaining to examination in question, it amounted to malpractice whether the same was used or not. The court also held that the view of the high court that punishment was disproportionate also was unsustainable as the respondent had confessed his guilt and a minimum punishment was imposed therefor.

The Supreme Court categorically declared that "we are of the firm opinion that in academic matters there should be strict discipline and malpractices should be severely punished. If our country is to progress we must maintain high educational standards, and this is only possible if malpractices in examinations in educational institutions are curbed with an iron hand."

14 (2009) 1 SCC 59.

## IV PROMOTION

It is common knowledge that promotion from one class to next higher class does not involve any fresh admission or re-admission. However, some institutions pre-occupied with the desire for better results or to do away with unwanted students resort to this unethical practices.

In *Principal, Kendriya Vidyalaya* v. *Saurabh Chaudhary*[15] (RV Raveendran and Aftab Alam, JJ) where the respondent had passed class X CBSE Examination from Central School No. 2, Chennai was denied admission in class XI in that school on the ground that his class X marks were lower than cut-off marks prescribed for admission in class XI. The Supreme Court found that it would be quite unreasonable and unjust to throw out a student from the school because he failed to get the cut off marks in the class X examination. The court also felt that after all the school must share at least some responsibility for the poor performance of its student and should help him in trying to do better in the next higher class. Further, the decision in *Payal Gupta*[16] forbids a school from turning down a student who failed to get cut-off marks for admission to class-XI. Though it is open to a school to offer admission to a boy in class XI in streams/courses other than science stream with mathematics on the basis of prescribed cut-off marks, since this school was having only science stream with mathematics, he was entitled to get admission in class XI.

The court also dealt with the distinction between fresh admission and re-admission. According to the court, on passing the examination, promotion from one class to the next higher class did not involve any fresh admission or re-admission in the same school. Whether examination was internal or a general examination by an external statutory agency made no difference in the position.

## V DEGREE

**Order to recall degree on wrong reservation set aside**

Ordinarily an admission on reservation should not entitle the candidate to any benefits if he did not deserve reservation. But in *Yogesh Ramchandra Naikwadi* v. *State of Maharashtra*[17] it was held that the degree need not be recalled though acquired after the benefit of reservation in admission was granted on the order of court but later on found ineligible for reservation. Admission to BE course was sought by the appellant claiming benefit of reservation pleading himself to be a 'ST'. Caste certificate of appellant was rejected by the scrutiny committee. An interim order was passed by high court directing to grant admission to appellant with a condition that granted

15 (2008) 14 SCALE 341.
16 (1995) 5 SCC 512.
17 (2008) 5 SCC 652.

admission would be provisional and subject to the final decision in his writ petition. Pursuant to the said order, he got admitted, completed the course and obtained a degree. His writ petition was subsequently dismissed upholding the finding of the scrutiny committee with a direction to respondent to take appropriate step to recall the degree granted to the appellant. The Supreme Court found that if the appellant's admission on the degree course was to be annulled, it was to nobody's benefit as his seat could not be offered to someone else. There was also no allegation that the appellant forged or faked the caste certificate. Further, the admission in the course was nearly 13 years back and he secured degree more than four years back. The appellant, therefore, was permitted to retain the benefit of the degree subject to certain terms. The first, that he shall not claim or seek any further benefit by claiming to belong to a scheduled tribe; second that if the state has spent or incurred any expenditure on the appellant's professional degree education by extending the benefit of exemption from payment of fee or award of scholarship or by extending the benefit of concession in fee (that is less than what is charged to general category students) by treating him as a scheduled tribe candidate, the appellant shall refund the entire sum. Thus, the appeal was allowed in part, deleting the direction of the high court to take steps to recall the degree awarded to the appellant.

**Recruitment based on a degree by a non-university not valid**

Can a degree be awarded by an institution without the support of a statutory provision? This has been answered a few times by the Supreme Court in the past. However, this issue comes up often in new forms. In *Pramod Kumar* v. *Uttar Pradesh Secondary Education Services Commission*[18] it was held by a bench consisting of SB Sinha and Harjit Singh Bedi, JJ that the termination of the appointment of appellant as an assistant teacher in an intermediate college was justified since he had BEd. degree from Maithili Viswa Vidyapeeth at the time of appointment which was not a recognized university under the UGC Act. Therefore, the court found that the termination was valid on the ground of disqualification for appointment. If the essential educational qualification for recruitment to a post is not satisfied, the same cannot be condoned.

Maithili Vishwa Vidyapeeth Sankat Mochan Dham was the institution involved. It was not a university. It is said to have been founded in the year 1962. Admittedly, it is a privately managed institution. It was not in dispute that the said institution was not recognized by any university. The Supreme Court reiterated the law that a degree is recognized only if it is granted by a university constituted in terms of the University Grants Commission Act, 1956 or under any state or parliamentary Act and that no university can be established by a private management without any statutory backing.

18 (2008) 7 SCC 153.

**Equivalence of degrees**

In *Gurunanak Dev University,*[19] the question was whether the admission to LLB course on the basis of a master's degree through distance education under open university system (OUS) was correct. The Gurunanak Dev University had prescribed the qualification for admission to LLB course a bachelors degree or a masters degree. One Sanjay Kumar Katwal had MA degree from Annamalai University through distance education under OUS. Even though initially the admission was granted after scrutiny, the university refused to approve the said admission. The high court rejected the university's contentions and declared the student as eligible since it found that master's degree was one of the qualifications prescribed. On appeal to the apex court the university contended that the student did not have a bachelors degree and hence merely with an MA he was not qualified for admission to LLB course. The Supreme Court through a judgment delivered by KG Balakrishnan CJ, rejected the said contention of the university, on the basis of its prescription of the eligibility criteria as a bachelors degree with not less than 45% marks or master's degree. Hence the court found that even a master's degree without a bachelors degree would satisfy the eligibility requirement. The contention of the university that a person without having a bachelors degree cannot have a master's degree also was rejected since Annamalai University had, in fact, such a provision for enrolment to MA course without bachelors degree.

However, the court accepted the last contention of the university that MA (OUS) of the Annamalai University possessed by the student was not recognized as an equivalent of the master's degree of the appellant university. The court accepted the plea on the categorical stand of the university that while regular courses and correspondence courses in MA conducted by the Annamalai University were recognized as equivalent to the MA of the university, the MA (OUS) course through distant education by Annamalai University was not recognized as equivalent to its own MA course. The court treated it as a matter of policy of the university and refused to interfere in the said policy being one relating to an academic matter. Thus, the appeal of the university was allowed. However, the Supreme Court granted relief to the student since he was not guilty of suppression or misrepresentation of facts and he was permitted to take the first semester examination by the university and he was permitted to continue the course and complete it. The court also reiterated its earlier directions in *Srikrishnan* v. *Kurukshetra University*,[20] that before issuing the admission card to a student it was the duty of the university authorities to scrutinize the papers and if they failed to do so the candidature cannot be cancelled on the ground of non-fulfilment of requirements. The court also reiterated what was held in *Senatan Gowda* v. *Berhampur University*,[21] that where the candidate was admitted to the law

19 (2009) 1 SCC 610.
20 (1976) 1 SCC 311.
21 (1990) 3 SCC 23.

course by the law college and the university permitted him to appear in the intermediate law examination, the college and the university were estopped from withholding his result on the ground that he was ineligible to take admission in the law course.

**Equivalence of qualification**

In *Basic Education Board, U.P.* v. *Upendra Rai*[22] a bench consisting of HK Sema and Markandey Katju, JJ has held that it is impermissible to subject to judicial review the determination by experts of the lack of qualification for appointment to the post of assistant master in junior basic school. According to the rules the required qualification was intermediate certificate along with training qualification consisting of basic teacher certificate (BTC), hindustani certificate, junior teacher certificate or any other training course recognized by government as equivalent thereto. Admittedly, the respondent held only a diploma in education (D.Ed.) awarded on completion of two years course from DIET Jabalpur and did not hold any certificates of training qualification referred to in the relevant rule. Earlier D.Ed. certificate issued by DIET was recognised as equivalent to BTC. However, by circular dated 11.8.1997 equivalence to BTC granted earlier to other certificates was cancelled with immediate effect . The Supreme Court found that the respondent got appointment after circular dated 11.8.1997 and hence the said circular applied to him. According to the court, it would not interfere in the matter of equivalence of qualifications which was decided by experts and the high court had wrongly held that the respondent fulfilled the requisite qualification for being appointed as an assistant master in a junior basic school.

## VI. EDUCATIONAL INSTITUTIONS

**Permission for new private schools**

In *Superstar Education Society* v. *State of Maharashtra*,[23] the Supreme Court through a three judge bench headed by KG Balakrishnan CJ discussed the object of regulating permission to open new private schools. The Government of Maharashtra had on 16.5.2006 granted permission to 1495 new higher secondary schools in the private sector. In fact, the Bombay High Court had earlier given directions for the preparation of a master plan for opening new schools. According to the high court the instant *en masse* granting of permission to new schools was in violation of its earlier direction to prepare master plan and hence it quashed the permissions granted by the government. The Supreme Court reversed the order of the high court finding it unjustified. The court held that any delay in drafting or finalizing the master plan cannot be a bar for permitting the opening of new schools.

22 (2008) 3 SCC 432.
23 (2008) 3 SCC 315.

According to the Supreme Court, the object of regulating permissions for new private schools are : (i) to ensure that they have the requisite infrastructure; (ii) to avoid unhealthy competition among educational institutions; (iii) to subject the private institutions seeking entry in the field of education to such restrictions and regulatory requirements, so as to maintain standards of education; (iv) to promote and safeguard the interests of students, teachers and educationists; and (v) to provide access to basic education to all sections of society, in particular the poorer and weaker sections; and (vi) to avoid concentration of schools only in certain areas and to ensure that they are evenly spread so as to cater to the requirements of different areas and regions and to all sections of society.[23a]

The court stated that it is the duty of the state government to provide access to education. Unless new schools in the private sector are permitted it will not be possible for the state to discharge its constitutional obligation. Permission has been granted to 1495 new schools under the order dated 16.5.2006 on permanent no-grant basis without any financial commitment or liability on the part of the state government, even in future, and at the same time ensuring that the schools follow the parameters and conditions prescribed by the Education Code, reserving liberty to the authorities to take appropriate action, should there be any violation. The Supreme Court found that the said order did not contravene any provision of law and that it was not even the case of the writ petitioner that the schools permitted did not fulfil the conditions and requirements relating to such schools.

**Educational institution should take a fair stand**

In *Mukesh Kumar Badoni* v. *State of Punjab*[24] it was held that it is improper for an educational institution to take different pleas and different stands at different stages. Educational institution is expected to take a fair stand before a court of law.

**Amenability of aided institution to writ jurisdiction**

Ordinarily, unaided private educational institutions are not amenable to writ jurisdiction unless to enforce a public duty or a statutory right. However, this issue has again been dealt with by the Supreme Court.

In *Correspondent, St. Michael's T.T.I.* v. *V.N. Karpaga Mary*[25] it was held that a writ petition challenging the termination of a teacher against a state aided institution was maintainable, especially when terms and conditions of employment of its teachers are governed by T.N. Recognised Private Schools (Regulation) Act, 1973 and Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974. The respondent was appointed in the said school on or about 11.7.1977. The teacher concerned was a graduate in master of education as also in master of science. He was having the requisite

23*a* *Id.* at 319.
24 (2008) 4 SCC 446.
25 (2008) 7 SCC 388.

qualification for recruitment to the said post. The state, however, issued a government order dated 16.9.1994 raising the qualification of a teacher. On the plea that the respondent did not hold the requisite qualifications in terms of the said order dated 16.9.1994, his services were terminated by the management of the school. The teacher filed a writ petition before the high court questioning the said order of termination, *inter alia*, stating that the said order dated 16.9.1994 could not have been given retrospective effect. The single judge quashed the said order of termination opining that once the appointment was made in a lawful manner and the teacher was found to have the requisite qualifications as prescribed at the time of such appointment, a revision in qualification so as to be applied retrospectively and affect the career of an appointee would not be permissible. The state had not issued any direction to remove the respondent from service. The Supreme Court held that the aided educational institution was amenable to writ petition and the teacher was entitled to get 75% of back wages in the facts and circumstances of the case.

**Tax exemption to educational institution**

In *American Hotel and Lodging Assn. Educational Institute* v. *Central Board of Direct Taxes*[26], it was held that mere existence of profit/surplus would not disqualify an educational institution to get exemption from income tax if the sole purpose of its existence was not profit making but educational activities. The appellant in the instant case was a non-profit educational institution set up in USA having a branch office in India which offered courses in hospitality field. It was also held that the character of the educational institution outside India, would be a irrelevant consideration for deciding whether its income would be exempted from taxation.

**Imposition of local language as medium of instruction**

A full bench of the Karnataka High Court has dealt with this issue in *Associated Managements of Primary and Secondary Schools in Karnataka* v. *State of Karnataka and Ors*.[27] The schools had challenged the policy of the Karnataka Government compelling children studying even in the unaided private schools to have primary education only in the mother tongue or the regional language. After considering several decisions of the Supreme Court the court declared that every citizen, every religious denomination, and every linguistic and religious minority, has a right to establish, administer and maintain an educational institution of his/its choice under articles 19(1)(g), 26 and 30(1) of the Constitution of India, which includes the right to choose the medium of instruction. It also directed that no citizen shall be denied admission to an educational institution only on the ground of language as stated in article 29(2) of the Constitution of India. However, it was held that

26 (2008) 10 SCC 509.
27 (2008) 4 Kar LJ 593.

the government policy introducing Kannada as the first language for the children whose mother tongue is Kannada was valid. The policy that all children, whose mother tongue is not Kannada, the official language of the state, shall study Kannada language as one of the subjects was also valid. The government policy to have the mother tongue or the regional language as the medium of instruction at the primary level was also held as valid and legal, in the case of schools which are aided by the state.

However, the court categorically ruled that the government policy compelling children studying in other government recognized schools to have primary education only in the mother tongue or the regional language was violative of articles 19(1)(g), 26 and 30(1) of the Constitution of India.

## VII TEACHERS AND SERVICE CONDITIONS

**Appointment de hors rules - salary not from government but from school**

In *Govt. of Andhra Pradesh* v. *K. Brahmanandam*[28] it was held that in the case of appointment of teachers in a recognised school without following relevant rules, the liability to pay salary was not on the state but on the institution concerned. Appointment of respondents as secondary grade teachers in upper primary schools were not done following the statutory rules. The court poised the question whether the state was liable to pay salaries, even if recruitment rules were not followed and answered the question in the negative. However, the court directed that the teachers would be entitled to salary from the school authority as they had worked even if no valid contract existed and that the principles of quasi-contract must apply keeping in view the relationship between the parties. But it was also held that doctrine of quasi-contract would not be applicable in a situation of this nature as against the state.

**Principal's post not subject to reservation**

In *Balbir Kaur* v. *Uttar Pradesh Secondary Education Services Selection Board*[29] it was held that absence of a provision for reservation in advertisement for selection of posts of principal of various institutions did not vitiate the advertisement. The court also observed that the post of the principal in an educational institution being in a single post cadre, in the light of the clear dictum laid down by it, cannot be subjected to reservation since it would result in 100 per cent reservation, which was not permissible in terms of articles 15 and 16 of the Constitution. Rejecting the argument that the single post of the principal ought to have been clubbed together and treated as a cadre, the court found that neither the principal Act, nor the rules made thereunder or the 1994 Act provided for clubbing of all educational institutions in the State of UP for the purpose of reservation.

28 (2008) 5 SCC 241.
29 (2008) 9 SCR 130.

**Brahmo Samaj case to be reviewed**

In *State of West Bengal* v. *Brahmo Samaj Education Society*,[30] the question relating to appointment of teachers in a state aided educational institution was referred to a constitution bench. Earlier in a judgement in the case of *Brahmo Samaj Education Society* v. *State of West Bengal*,[31] which was sought to be reviewed by the state the court had observed that the education society's right to administer includes right to appoint teachers of their choice from among NET/SLET qualified candidates. In the earlier case the Brahmo Samaj Education Society had claimed the minority rights under article 30. However, the court had found that even as a non-minority it would have the right to select and appoint teachers under article 19 (i) (g), in view of the decision in *T.M. A. Pai*.[32] The court in the present case agreed to review the earlier ruling in *Brahmo Samaj*.[33] This may indirectly call for a review of *T.M.A. Pai* itself.

**Appointment obtained not by fraud or misrepresentation**

*State of Bihar* v. *Krishna Paswan*[34] was a case of termination of service on the ground of obtaining appointment by practising fraud and misrepresentation. Respondents secured appointment as matric untrained teachers and not as matric trained teachers as alleged by the appellant-state. They neither applied for posts of trained teachers nor supplied any documents of training nor, at any point of time, underwent any training. On the date of interview, matric trained teachers were appointed against posts of matric trained assistant teachers and respondents were appointed as matric untrained assistant teachers in two different pay scales. Matric trained assistant teachers were given higher pay scale as compared to matric untrained assistant teachers like respondents. Respondents filed requisite certificates regarding their educational qualifications having qualified matriculation examination and thereby they were qualified to be appointed as assistant untrained teachers without undergoing training. However, the services of respondents were ordered to be terminated on the ground of absence of training. The said order was held to be bad in law by the high court. Before the Supreme Court the appellant state failed to prove that respondents at any point of time got appointments as matric trained teachers by practicing fraud or misrepresentation. Hence they were directed to be reinstated against posts of matric untrained assistant teachers without back wages.

30 (2008) 14 SCALE 83.
31 (2004) 6 SCC 224.
32 *Supra* note 7.
33 *Supra* note 31.
34 (2008) 14 SCALE 19.

## VIII MINORITY EDUCATIONAL INSTITUTIONS

In *Committee of Management* v. *Vice Chancellor*,[35] the high court had refused to exercise the writ jurisdiction in favour of the management of a minority educational institution on the ground of availability of alternate remedy. The minority run post graduate college was affiliated to the university and the management committee had passed a resolution for removal of the principal from service on the finding of misconduct after holding an enquiry. However, the vice-chancellor refused to grant approval for the removal order. Aggrieved by the same, the management filed a writ in the high court which was dismissed on the ground of availability of alternative remedy. The Supreme Court found that the high court was not justified in dismissing the petition on the ground of availability of alternate remedy. It held that the question whether the vice-chancellor properly exercised the power while refusing to grant approval for removal, being an intricate question, should have been decided by the high court. Hence the matter was remanded to the high court for its decision.[36]

The question of constitutionality of exempting the minority educational institutions from the duty to provide reservation to backward classes in admission had arisen in *Ashok Kumar Thakur*.[37] However, the constitution bench upheld article 15(5) and repelled the challenge to its constitutional validity on the ground of its exempting the minority educational institutions under article 30 from reservations in admissions.

The Delhi High Court had an occasion to reiterate the law already declared by the Supreme Court that even the aided minority educational institution has the right to appoint a person of its choice as the principal provided the person fulfilled the eligibility conditions and qualifications required by law. In *St. Stephen's College*,[38] a division bench upheld the right of the management to appoint the principal of its choice without any interference by the university authorities. In *St.Antony's School*[39] a division bench of the high court quashed and set aside, the provision of recruitment

35 (2008) 16 SCALE 310.

36 The Supreme Court referred to : *Management Committee, Atarra Post Graduate College* v. *Vice Chancellor*, *Bundelkhand University, Jhansi & Anr.*, 1990 (Supp) SCC 773; *Whirlpool Corporation* v. *Registrar of Trade Marks*, (1998) 8 SCC 1; *Mumbai & Ors. Guruvayoor Devaswom Managing Committee & Anr.* v. *C.K. Rajan & Ors*, (2003) 7 SCC 546; *Manvendra Misra (Dr.)* v. *Gorakhpur University, Gorakhpur & Ors.*, (2000) 1 UPLBEC 702; *Frank Anthony Public School Employees' Association* v. *Union of India & Ors.*, (1986) 4 SCC 707; *Mrs. Y. Theclamma* v. *Union of India & Ors.*, (1987) 2 SCC 516; *Christian Medical College Hospital Employees' Union & Anr. etc.* v. *Christian Medical College Vellore Association & Ors. etc.*, (1987) 4 SCC 691; and *P.A. Inamdar & Ors.* v. *State of Maharashtra & Ors.*, (2005) 6 SCC 537.

37 *Supra* note 2.

38 *St. Stephen's College* v. *University of Delhi*, 2008 (152) DLT 228.

39 *St. Anthony's Girls Sen. Sec. School* v. *Govt. of N.C.T. of Delhi*; 2008 (106) DRJ 935.

rules for the appointment of principal of a school under the Delhi Education Act which required to follow the promotion procedure first, failing which direct recruitment. However, the court upheld the selection procedure under rule 96 of the Delhi Education Rules where the representatives of the education department are merely observers.

## IX CONCLUSION

It can safely be said that during the year under survey the Indian law on education has taken giant strides that too in the right direction. Upholding of article 15(5) of the Constitution against the challenge of unconstitutionality is no mean achievement. The importance of the principle of egalitarian equality in the field of education has been well recognised. The autonomy and freedom of the educational institutions in the areas of academic and policy matters have been reiterated. The Supreme Court has shown its strictness and its determined attitude to root out malpractices in examinations and appointments. It has stressed the need for strict purity in examination of educational institutions. It has also reiterated that no sympathy or leniency should be shown to candidates who resort to unfair means in the examination. The courts have also gone to the aid and rescue of the hapless students. It has gone to the extend of allowing to give the degrees though the admission was irregular on the ground that they were not at fault. The courts have also continued its liberal interpretation in favour of minority educational institutions. However, the opening up of the decision in *Brahmo Samaj* case with regard to the right of the aided institutions to select and appoint their teachers can become a matter of concern. Overall the law on education had a fruitful and commendable year in 2008.