14

EDUCATION LAW

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I INTRODUCTION

"EDUCATION HAS never been nor can it be allowed to become commerce in this country. Education has always been treated, in this country, as a religious and charitable activity and making it commercial is opposed to the ethos, tradition and sensibilities of this nation...".[1] This was the view expressed by Supreme Court of India during the year under survey relying on an earlier decision by a constitution bench. Further, while the governments have been mulling over amending the Right to Education Act, 2009 (RTE) to bring back the detention policy to elementary classes the courts have insisted on the implementation of the no-detention policy as it emanates from the fundamental rights of the children at least those before the age of discretion.

Prescribing educational qualification for panchayat elections on the one hand showed the apex court adopting a strained logic to uphold it, on the other we have high courts coming out with reasoning demonstrating it as unconstitutional. Since Supreme Court is final the logic of the high courts may have to wait for getting an imprimatur. It would be interesting to watch how the different dimensions of the educational rights both of the givers and the receivers got expanded in some cases and had a shrinking effect at least in a few instances.

II RIGHT TO EDUCATION

With regard to the implementation of the fundamental right to receive education, the Supreme Court and several high courts have been continuing their sacred mission in giving a liberal and expansive interpretation of this right and also ensuring the proper enforcement of it. The apex court has taken note of the fact that in the absence of sufficient and qualified teachers the right to education would be futile and hence has passed several orders. By one of such orders on October 28, 2015 in the case of *J. K. Raju* v. *State of Andhra Pradesh*,[2] the court has even directed a committee to

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1 DM Wayanad Institute of Medical Science v. Union of India (2016) 2 SCC 315.

2 MANU/SCOR/30475/2015.

look into the shortage of teachers in the state of Andhra Pradesh and Telangana. Of course, the Constitution bench decision upholding the fundamental right to education under article 21A and the RTE stands referred to a higher bench for reconsideration in *Ashwini Thanappan* v. *Director of Education.*[3]

Right to free and compulsory education in neighbourhood school does not include right to insist on school of choice

In *Nisha Kanwar* v. *State of Himachal Pradesh,*[4] a division bench of the High Court of Himachal Pradesh considered the right of students to get education including the provisions of the RTE and article 21A of the Constitution of India. It has found that right to free and compulsory education in a neighbourhood school does not include right to insist on a school of choice. It also held that in case of an admission in class XI the student does not have an unfettered right to seek admission in any of streams of his choice since the same would dependent upon the cut-off marks fixed by the school for admission to different streams.

Schools imparting education at the two levels i.e., pre-primary and primary level, have to admit reserved category children at both the entry levels

In *Vikhe Patil Foundation* v. *Union of India,*[5] a Division Bench of the High Court of Bombay found that under the provisions of the RTE with regard to giving free education to children from weaker sections, the expression '25% of the strength of that class' in section 12 (1)(c) means and includes pre-primary school (3 to 6 year), first entry level and also of first standard of elementary (primary) school, both the entry level classes. The court has also held that a private school has no option to select one of the two entry levels *i.e.,* pre primary class and first standard class for the said purpose. It was further held that schools imparting education at these two levels *i.e,* pre-primary and primary level had to admit reserved category children at both the entry levels and that the government circular on January 21, 2015 and related communications providing for reservation at the two levels were legal and valid.

State to reimburse the expenses of the 25% of the pre-school children to private schools

In *Uran Education Society, Uran* v. *State of Maharashtra,*[6] a Division Bench of the High Court of Bombay considered whether the state is bound to reimburse the expenses of the 25% of the pre-school children to private schools under the RTE and the Maharashtra Right of Children to Free and Compulsory education (Manner of Admission of Minimum 25% Children in class I or Pre-school at the Entry Level for the Children belonging to Disadvantaged group and Weaker Section Rules, 2013. The state government had insisted various private unaided schools to admit students of disadvantaged groups in pre-nursery schools. However, the government refused to

3 (2014) 8 SCC 272.
4 AIR 2016 HP19.
5 2015 (6) ABR 53; AIR 2016 (NOC) 105 (Bom).
6 2015 (5) ABR 539; AIR 2016 (NOC) 101 (Bom).

reimburse the amount to schools for such students who were given admission at pre-school level on the ground that reimbursement is provided only for elementary education from 1st standard to 8th standards. The court found it improper and held that state government is liable to reimburse the amount to schools who impart education to children of 3 to 6 years age group belonging to disadvantaged sections.

The court was of the view that the issue of reimbursement for providing education to children from age 3 to 6 years cannot be read in isolation by distinguishing it from section 11. So far as the elementary education is concerned, section 12 itself contemplates and provides to admit students at least to the extent of 25%. The said provisions along with the rules definitely contemplate the entitlement of reimbursement of such schools/institutions which provide such education by admitting such 25% children. The moment such school/institution admits such students of aged 3 to 6 years, their entitlement of reimbursement should follow. Early childhood care and education is an essential foundation for the future of the children of all the groups and specially of disadvantaged and poor, weaker part of society. It is the appropriate government's duty to make arrangements to fulfill its social obligations which include sharing financial burden with private institutions, Central Government, school and parents. The reimbursement is one of such arrangements. It is essential to make arrangements to provide preschool education for weaker sections and disadvantaged groups. The state must provide public pre-school or make arrangement for the same.

Challenge by aided primary schools to the establishment of new primary school by state not maintainable

The High Court of Madhya Pradesh has repelled the challenge by the aided schools to the establishment of a government primary school in *Aided Primary School, Rajgarh* v. *State of M. P.*[7] Establishment of a new primary school by the state was challenged by 33 government aided primary schools imparting education till primary level in the same area. A plea was taken that the establishment of new primary schools in the same area runs contrary to section 6 of RTE Act. But the court found that in view of articles 21A and 45 of the Constitution of India it is the constitutional mandate and duty on the part of a welfare state to establish such institutions. Section 6 of RTE Act by no stretch of imagination can become a hurdle for the establishment of institutions by the government. As per article 51-A it is the duty of every citizen to support any such action of government by which excellence can be achieved and make efforts to develop scientific temper, humanism *etc.* Finding that no interference is possible in the decision of the state government to establish new primary schools, the court dismissed the petition with costs of Rs. 5,000/-.

7 AIR 2015 (NOC) 617 (M.P) (Gwalior Bench).

III STUDENTS' RIGHTS

Minimum hours of lecture classes and holding of tutorials, moot court and seminar to be scrupulously followed before commencement of law examinations for each semester

In *Satheesh Kumar N.* v. *Mahatma Gandhi University*,[8] the High Court of Kerala has reiterated the principle that statutory prescription of minimum hours of lecture classes and holding of tutorials, moot court and seminar by Bar Council of India are to be scrupulously followed by universities before commencement of examinations for each of the semesters. The court referred to the provisions of the Advocates Act (25 of 1961) and the Rules of Legal education (2008) and deprecated the practice of holding semester examination without being preceded by sufficient number of teaching hours.

Class 12 candidate is entitled to compensation for negligence of valuers

In *Prakhar Kumar Mishra* v. *Madhya Pradesh Board of Secondary Education*,[9] the High Court of Madhya Pradesh has held that a Class 12 candidate is entitled to compensation for negligence of valuers. In the present case the valuers had awarded less marks to the candidate in two subjects. Two independent subject-experts opined that the candidate ought to have been awarded more marks. Valuers were not alert and vigilant while performing their duty of evaluation. The court found that the fate and future of the candidate might get suffered due to such negligent act of valuers. It was directed that the candidate was entitled to a compensation of Rs. 50,000/-.

Detention of minor student aged 12 years in standard VI on the ground of inadequate academic performance was improper

The High Court of Kerala had occasion to consider the mandate of the no-detention policy under the RTE and the Kerala Right of Children to Free and Compulsory education Rules (2011) in *Kitty Sanil* v. *State of Kerala.*[10] The court found that the provisions of RTE Act require that once a student has been admitted to a recognised school then the student must progress through various stages of elementary education in that school without any hindrance and without being held back in any class or expelled from the school till completion of his elementary education. The court held that the detention of minor student aged 12 years in standard VI on the ground of inadequate academic performance was improper and the school was directed to promote the student to the next higher standard for pursuing his elementary education till he attains age of 14 years. Another bench of the same high court has recently held that any denial of promotion upto elementary school level even in minority schools would amount to denial of fundamental rights of child including the ones under article 21 of the Constitution.[11]

8 AIR 2016 Ker. 93.

9 AIR 2016 MP 175.

10 AIR 2015 (NOC) 997 (Ker.).

11 *Sobha George Adolfus* v. *State of Kerala*, 2016(3) KLT 271.

Time of three days for objecting to answer key of entrance examination sufficient

A division bench of the High Court of Delhi considered the question whether time of one week, instead of three days, should be given for objecting to the answer key in the entrance examination in *Rajeev Kumar* v. *Union of India*,[12] Joint Entrance Examination (JEE Advanced) 2015 examination was scheduled to be held on May 24, 2015. ORS images and scanned responses were scheduled to be displayed on the online portal from June 3-6, 2015 and the requests for review of scanned responses were permitted to be made during the said time. Answer key was scheduled to be displayed on June 8, 2015. Time for making objections to the answer key had been provided from June 8, 2015 to June 11, 2015 and the marks allotted to each candidate were to be displayed on June 13, 2015. The court found that it was not for the court to tinker with the rules and regulations of examination drawn up by the experts in the field of education. If they have deemed time of three days to be sufficient, the court cannot substitute its own opinion for that of the experts.

Petitioner in the public interest litigation (PIL) was seeking certain directions for reform in the JEE conducted every year for admission to the various Indian Institutes of Technology (IITs) and National Institutes of Technology (NITs). The court also rejected the contention that there was no need to wait till the holding of the examination, for sharing the question paper and the answer key prepared by the setter with the experts and the said process could happen before the examination also. The court found that the circulation of question paper and answer key with the experts from seven IITs, before the examination, would make the question paper known to many more persons, affecting the secrecy/confidentiality thereof.

University to review rules under RTI permitting only inspection instead of furnishing copy of Optical Mark Reader (OMR) answer sheets, question paper and answer keys of the entrance test.

In *Rajat Mann* v. *Guru Gobind Singh Indraprastha University*,[13] a division bench of the High Court of Delhi considered the obligation of furnishing the information by the examining body under the Right to Information Act, 2005. The appellant had appeared in the common entrance test (CET) held by respondent no.1/university for admission of its MBBS course and after successfully qualifying stage-I of examination, appeared in stage-II and was ranked at no.3631 with 75 out of 150 marks in Botany and 63 out of 150 marks in subject of Zoology. Being not satisfied with marks awarded to him in the said two subjects, he applied under RTI Act for copies of OMR answer sheets, question paper and answer keys. University however in response allowed only inspection of OMR answer sheet and did not provide to appellant question paper or answer key stating that there was no provision for providing it. Writ petition was filed

12 2015 (4) AD (Delhi) 385.

13 2015 (219) DLT 791.

impugning regulations of the university permitting only inspection of answer sheets and prohibiting supply of question papers and answer keys. The court found that the respondent no.1/university pegged its case under clause (j) of sub section (1) of section 8 which exempts from disclosure of information which relates to personal information and disclosure of which has no relationship to any public activity or interest or which would cause unwarranted invasion of the privacy of the individual. It was noticed by the court that the issue as to whether question papers/answer sheets/answer keys fall in the said exemption was no longer *res integra* in view of the decision of the Supreme Court in *The Institute of Chartered Accountants of India* v. *Shaunak H. Satya*,[14] holding that furnishing of information by an examining body, in response to a query under RTI Act may not be termed as an infringement of copyright. However, matter being academic in nature and with respect where to settled principle of law is that decision should be left to experts in the field of education, the court, instead of quashing rules/ polices of university, deemed it appropriate to direct University to take a decision on all the said aspects. The court also distinguished on facts the decision of the same high court on May 28, 2012 in the case of *All India Institute of Medical Sciences* v. *Vikrant Bhuria* LPA No.487/2011.

The court observed that it appeared to be a case of the respondent no.1 university having not changed its mindset and kept it in tune with the new regime under the RTI Act. The court also found that giving inspection of a document was not the same as furnishing a copy thereof. Though the RTI Act in section 2(j), while defining "right to information" includes besides taking copies, also a right to inspect but section 6(1) requires a person seeking information to specify the information sought and section 7(9) requires the information sought to be "ordinarily..... provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question." It thus follows that if the information seeker, in exercise of right of information, has sought information by furnishing copies of information, the Act mandates (section 7(9) uses the word "shall") furnishing of information in the form of copy of the information/document and the public authority cannot say that it will furnish such information by offering inspection thereof. The only grounds on which the public authority can say so is, either where supply of information by furnishing copies would entail diversion of resources or where furnishing of copies would be detrimental to the safety or preservation of the information/document. The university has refused to supply copies of OMR answer sheets of the appellant himself and the answer key, not on the grounds of the same entailing diversion of resources but on the ground of the same in turn revealing the contents of the question paper. The same cannot be a ground of preservation of the OMR answer sheet or answer key.

Change in the name of student after issuance of certificate by CBSE permissible

The change in the name of a student affected after issuance of certificate by CBSE is permissible as held in *Hemant Malviya* v. *Central Board of Secondary*

14 (2011) 8 SCC 781.

Education,[15] by the High Court of Delhi. Petitioner sought a writ of *mandamus* to CBSE to incorporate and give effect to the change in his name, and that of his father as well as his mother different from that given in the Certificate Examination, 2011 and in All India Secondary School Examination, 2008 certificates issued to the petitioner. The court found that a perusal of the prevalent bye-law 69.1 shows that the change in name is distinct from correction in name which is indeed permissible within a period of ten years from the date of issuance of the certificates. The court found that the arguments of CBSE that only correction of name is permissible and that change in name affected after the issuance of certificate cannot be incorporated in the CBSE records could not be sustained.

Restriction of subjects for re-evaluation of answer-sheets improper

The High Court of Delhi considered the right of re-evaluation of answer-sheets in Class XII and found that the restriction of subjects in which revaluation can be sought was improper in *Samarth Mittal* v. *Union of India*.[16] CBSE refused to re-evaluate the answer sheet of the petitioner in the subject of 'Physical Education' in the class XII examination on the ground that CBSE circular permits revaluation in ten subjects only and of which 'Physical Education' is not one included in the list. Amended rule 61 of the examination bye-laws of the CBSE provides that for class xii, examination, a candidate may also apply for re-evaluation in the manner as prescribed by the board from the time to time and amendment was carried out in the year 2014. The court found that the words "....may also apply for re-evaluation in the manner as prescribed by the Board from time to time" are incapable of any two meanings. Same cannot be stretched to mean that the CBSE, while prescribing the manner, can decide to allow re-evaluation selectively in only some of the subjects of examination in class XII. The court also did not approve of the denial of re-evaluation on the possibility that if order of re-evaluation is passed that would lead to opening the floodgates and leading to a large number of students seeking re-evaluation in the subjects other than those covered by the circular of the CBSE. Difficulty involved in implementing a law is no ground to apply the provision of law in a manner different from what the law means.

IV ADMISSION TO EDUCATIONAL INSTIUTIONS

Remedy for non-granting of deserving admission by college

The Supreme Court has considered the effect of not granting admission due to the fault of the college despite the name being in the merit list in the case of *S. Nihaal Ahamed* v. *Dean, Velammal Medical College Hospital and Research Institute*.[17] The

15 2015 (221) DLT 195.
16 2015 (6) AD (Del.) 498.
17 (2016)1 SCC 662.

appellants though placed in the merit list could not secure admission due to the fault of the respondent/medical college. The single bench of the high court found that they were not entitled to relief of admission sought for by them in the writ petition due to lapse of time and that appellants-writ petitioners were entitled to a sum of Rs.3 lakhs each as compensation payable by respondent/medical college. The said direction was reversed by the division bench. The Supreme Court found that the order of single judge deserved to be restored. Therefore the court partly allowed the appeals and the order of single judge awarding compensation of Rs.3 lakhs to each of the appellants was restored along with the time schedule for payment. The court relied on its earlier decision in *Chandigarh Administration* v. *Jasmine Kaur*.[18]

Introducing concept of 'domicile of Gujarat' in NRI quota for admission to MBBS irrational

In *Kolasani Sai Yashwanth Reddy* v. *State of Gujarat,*[19] a division bench of the High Court of Gujarat considered the validity of the rule introducing a concept of 'domicile of Gujarat' in NRI quota for admission to MBBS course and providing for preparation of merit list on that basis. The court found that the rule on the face of it was irrational and arbitrary. The rule 7(1) C (4) manifests, that the criteria assigned is of domicile of Gujarat further to classify and sub-classify 'Non-Resident Indian' as genuine Non-Resident Indian (NRI) and dependent NRI with reference to the domicile. On a bare consideration and reading, the two concepts are incongruent. A striking irrationality in the rule and the classification is that it divides NRIs on the footing of domicile in the state. This brings out a conceptual irreconcilability. One who is NRI and having a domicile in Gujarat do not go together. In conceiving a category of those who are not residing in India but domiciled of Gujarat, the nexus is broken rather than bridged. This by itself could be said to be rendering the rule irrational on the face of it. Irrationality is a recognised form of arbitrariness.

The contention that the domicile concept is inserted in the rule for cultivating affinity is too theoretical proposition to be accepted for the purpose of judging legal validity of the rule, apart that the submission is too nebulous to be countenanced. As regards the say that NRIs would bring money which would be utilized for uplifting the standards of medical education, *etc.,* it is a common phenomenon for all NRI whether domiciled of Gujarat or not and the said aspect or contention hardly carries further the case of the respondents authorities.

Premedical tes]t to be cancelled if vitiated by malpractices as part of deep-rooted conspiracy

In *Tanvi Sarwal* v. *Central Board of Secondary Education,*[20] the Supreme Court considered the issue of the leakage of exam question paper for All India Pre-Medical and pre-dental entrance test, under the aegis of the CBSE/board. While the test was

18 (2014) 10 SCC 521.
19 AIR 2015 Guj. 188.
20 (2015) 6 SCC 598.

on, a secret information was received that some persons were involved in leakage of answer key of question paper of said examination and circulation thereof to candidates, in lieu of monetary gain and that they were moving around in a swift car. Raids were conducted by police near examination centers, and intercepted a car with persons involved in leakage of papers. The report on investigation by police was placed before the court which showed that a team of doctors who were engaged for solving these questions had provided answers, those answers were thereafter forwarded from about 70 mobile phones which were used for transmitting.

The challenge before the court was to the All India Pre-Medical and Pre-Dental Entrance Test, 2015 under aegis of CBSE/board, having been perceived by petitioners to have been irreversibly vitiated by use of unfair means and malpractices through electronic gadgets and devices facilitating illegal and unfair access to 90 answer keys during examination conducted on May 5, 2015 to the beneficiary candidates of such corrupt design at the behest of a syndicate for unlawful gain. The court found that the examination had been exposed to a deep rooted conspiracy of a gang of persons who with aid of electronic devices have been able to access beneficiary candidates with answer keys during test so as to enable them to solve question paper. In view of widespread network, that has operated, as status reports disclose and admission of persons arrested including some beneficiary candidates, in view of strong possibilities of identification of other candidates as well involved in such mal practices, the whole examination has become a suspect. The court found that the segregation only of already 44 identified candidates stated to be beneficiaries of unprincipled manoeuvre by withholding their results for time being, cannot be the solution to the problem that confronts all. Having regard to fact, that the course involved with time would yield future generations of doctors of country, who would be in charge of public health, their inherent merit to qualify for taking course can by no means be compromised. Consequently, All India Pre-Medical and Pre-Dental Test was cancelled and CBSE was directed to hold a fresh examination at the earliest, by complying with all necessary and prescribed norms. The court referred to the decisions in *Mridul Dhar* v. *Union of India*,[21] and *Priya Gupta* v. *State of Chattisgarh*.[22]

The court was aware that the abrogation of the examination, would result in some inconvenience to all concerned and that same extra time would be consumed for holding a fresh examination with renewed efforts therefor. According to the court, this would be the price, the stakeholders would have to suffer in order to maintain the impeccable and irrefutable sanctity and credibility of a process of examination, to assess the innate worth and capability of the participating candidates for being assigned inter se merit positions commensurate to their performance based on genuine and sincere endeavours.

21 (2005) 2 SCC 65.

22 (2012) 7 SCC 433.

Meritorious in-service candidate cannot be denied admission to medical PG course only because he has an eligible senior above him though lower in merit

In *Sudhir N.* v. *State of Kerala*,[23] writ petitions were filed challenging constitutional validity of section 5(4) Kerala Medical Officers' Admission to postgraduate courses under Service Quota Act, 2008 in so far as it provided that 'admission to post-graduate in-service quota shall be only on the basis of seniority'. High Court of Kerala, by impugned judgment, allowed the petition and agreed in principle that admission to post-graduate courses can be made only on the basis of *inter se* seniority provided candidates appear in common entrance examination and obtain minimum eligibility bench mark in that test in terms of regulations framed by Medical Council of India (MCI). The Supreme Court held that high court was right in holding that in asmuch as provisions of section 5(4) of impugned enactment provides a basis for selection of candidates different from one stipulated by MCI Regulations it was beyond legislative competence of state legislature. High court adopted a reconciliatory approach when it directed that seniority of in-service candidates will continue to play a role provided candidates concerned have appeared in common entrance test and secured minimum percentage of marks stipulated by regulations. The Supreme Court found that the high court was not correct in making that declaration. A meritorious in-service candidate cannot be denied admission only because he has an eligible senior above him though lower in merit. Merit and merit alone can be basis of admission among candidates belonging to any given category. The court relied on the decisions *Preeti Srivastava* v. *State of M.P.* [24] *State of T.N.* v. *Adhiyaman Educational & Research Institute* [25] and *State of M.P.* v. *Gopal D. Tirthani*.[26]

Even when in *Gopal D. Tirthani's* case, the Supreme Court had allowed in-service candidates to be treated as a separate channel for admission to post-graduate course within that category and also admission can be granted only on the basis of merit. If service candidates belong to one category, their *inter-se* merit cannot be overlooked only to promote seniority which has no place in the scheme of MCI Regulations. That does not mean that merit based admissions to in-service candidates cannot take into account the service rendered by such candidates in rural areas. Weightage for such service is permissible while determining the merit of the candidates in terms of the third proviso to regulation 9. That being so, admissions can and ought to be made only on the basis of inter se merit of the candidates determined in terms of the said principle which gives no weightage to seniority simpliciter.

State can decline second sponsorship for post graduate admission above seniors

Whether it was illegal on the part of the West Bengal government to decline second sponsorship within three years for admission to post graduate medical course

23 (2015) 6 SCC 685.
24 (1999) 7 SCC 120.
25 (1995) 4 SCC 104.
26 (2003) 7 SCC 83.

availing trainee reserve facility was the issue before the apex court in *Tapas Kumar Mandal* v. *State of West Bengal*.[27] Appellants were the MBBS doctors registered with West Bengal Medical Council and under service of West Bengal Public Health and Family Welfare department. They had completed their various specialized diploma courses in 2014 after clearing West Bengal Post Graduate Medical Admission Test, 2012 (PGMAT) sponsored by government availing Trainee Reserve Facility (TR facility). Thereafter, appellants further participated in WBPGMAT 2015 in the category of government sponsored doctors and they got place in the select list, but they were denied placement on the ground that they would not be given second sponsorship and TR facility within three years. West Bengal Administrative Tribunal declined to give stay and allow early hearing against said decision. Writ against the same was dismissed by high court. The Supreme Court found that under rule 9 placement of the doctors shall be at the discretion of the government and merely because the appellants were allowed in the examination and found place in the select list did not give them the right as in-house doctors to get priority above their seniors. The court found no reason for interference in the judgments passed by lower fora.

Scheduled tribe benefits not available for admission in migrated state

In *Melwin Chiras Kujur* v. *State of Maharashtra*,[28] the Supreme Court considered whether the benefits of reservations for scheduled tribes (ST) would be available on migration from one state to another even if the tribe is recognized in the state of migration. Appellant sought admission to B.Tech course in a college in State of Maharashtra for session 2009-2010 against a reserved seat meant for ST candidates. His case was that he belongs to Oraon tribe which is found in the States of Jharkhand, Bihar, West Bengal and Maharashtra. His further case was that his fore fathers had migrated to State of Maharashtra in year 1947 and ever since then they had lived permanently in the State of Maharashtra. Those belonging to Oraon tribe were according to appellant recognised as ST even in the State of Maharashtra and thus claimed that his family had migrated from Jharkhand to Maharashtra and he could not be denied the benefit of reservation available for that tribe. The said claim was repudiated by the competent authority who declined to grant him a caste validity certificate on the ground that he was a migrant in State of Maharashtra, hence not entitled to benefit of reservation. Appellant filed writ petition before High Court of Judicature at Bombay which petition was dismissed by a division bench of that court by on October 15, 2012 relying upon the decision of the Supreme Court in *Marri Chandrashekhar Rao's* case.[29] Appellant was admitted to B.Tech course which he had already completed although his result was not announced so far. The Supreme Court held that the benefits of reservations are not available to those migrating from one State to another even if such candidates belong to the same caste and the

27 (2016)1 SCC 573.

28 2016 (3) SCALE 684.

29 *Marri Chandrashekhar Rao* v. *Seth G.S. Medical College* (1990) 3 SCC 130.

controversy therefore stood concluded and did not require any further elaboration in view of settled law. However the court was inclined to examine whether appellant's fore fathers had migrated to State of Maharashtra before the year 1950 and to remand to high court to examine that aspect. But having regard to the pronouncement of the Supreme Court in *Milind's* case,[30] the court did not consider it necessary to do so. In *Milind*'s case, facts were almost similar. Appellant had already completed the course though results remained to be announced. Denial of benefit of studies he had undertaken would not mean any corresponding benefit to those who might have been entitled to the same in the absence of admission granted to them against vacancy which was allotted to appellant. Therefore, court directed that the benefit of studies undertaken by appellant shall be granted to him and result of appellant be announced by authorities concerned subject to the condition that appellant shall not merely on that basis claim to be a ST entitled to claim any further benefit. The court allowed the appeal and set aside the order passed by high court and directed pronouncement of result of the appellant. The court relied on its earlier decision action committee on issue of caste certificate to scheduled castes and scheduled tribes in the *State of Maharashtra* v. *Union of India.*[31]

After admissions closed no right to get admission in class XI even in the same school

In *Satyam Gandhi* v. *Union Territory, Chandigarh*,[32] the Supreme Court considered whether a school could be directed to admit a student in class XI of the same school in the commerce stream which was earlier offered but refused. Appellant applied for admission in class XI in medical stream, but as was found ineligible, was denied admission in medical stream. He was given option to take admission in commerce stream which he did not opt at first instance, resultantly, admissions even in commerce stream were over. Appellant filed a writ petition before high court seeking a direction to respondent-school to admit him in class XI which was dismissed by the impugned order. In appeal the supreme court found that there was no reason to interfere with the impugned order passed by the high court wherein high court after taking into consideration facts of case and relevant bye-laws of CBSE, particularly clause 7.4, came to the conclusion that relief sought for by appellant cannot be granted by issuing appropriate writ directing the school to admit the appellant even in commerce stream. The court found that the students who study up to class X in any school whether aided or non-aided are entitled to get admission in class XI in the same school unless he or she declines before the admission is closed. However, in which stream they are to be admitted, it depends upon their merits and performance that shall be decided by the school authority.

30 *State of Maharashtra* v. *Milind* (2001)1 SCC 4.

31 (1994) 5 SCC 244.

32 2015 (9) SCALE 772.

High court not to give interim relief to grant admission in medical college

In *Medical Council of India* v. *RFDF Medical College Hospital and Research Centre*,[33] the Supreme Court interfered with and quashed the interim relief granted to the Medical College permitting it to give admission to students. By impugned order, the high court had permitted college to give admission to students. MCI challenged it in appeal before the Supreme Court. The court found that the interim relief ought not to have been granted by high court and college should not have been permitted to give admission to students. The court directed that admission, if any given, stood cancelled.

Admission in super-specialties in medicine to be open and free

In *Sandeep* v. *Union of India*,[34] the Supreme Court considered the grievance that in super-specialty entrance examination in states (States of Andhra Pradesh, Telangana and Tamil Nadu) the eligibility was confined only to candidates having domicile in their respective states. Writ petition praying that restraint imposed by three States, amounted to reservation in respect of post-graduate level; and as far as super-specialty courses are concerned, question of reservation based on residence or institutional preference is totally impermissible, for merit cannot be compromised by making reservation on consideration, like residential requirement, as that would be absolutely against national interest and plays foul of equality clause engrafted in the Constitution. Petitioners laid immense emphasis that there cannot be reservation of any kind in respect of post-graduate or super speciality courses regard being had to law laid down by many a judgment to the said effect court. The Supreme Court found that the undivided State of Andhra Pradesh enjoys a special privilege granted to it under article 371-D of Constitution and Presidential Order, 1974. Judgments of larger bench did not refer to said article nor do they refer to Presidential Order, for the said issue did not arise in the said cases. The court noticed that the scheme laid down in the case of *Pradeep Jain*,[35] and concept of percentage had undergone certain changes. In *Reita Nirankari* case,[36] same three-judge bench clarified the position. However, in *C. Surekha* case,[37]court had expressed its view about amendment of Presidential Order regard being had to passage of time and advancement in State of Andhra Pradesh. However, taking note of the submission of counsel for petitioners that despite 27 years having been elapsed, situation remained the same, the court was inclined to echo the observation that was made in the case of *Fazal Ghafoor* case[38] wherein it has been stated that in super specialties there should really be no reservation. The court reiterated

33 2015 (12) SCALE 345.
34 (2016) 2 SCC 328.
35 *Pradeep Jain* v. *Union of India* (1984) 3 SCC 654.
36 *Reita Nirankari* v. *Union of India* (1984) 3 SCC 705.
37 *C. Surekha* v. *Union of India* (1988) 4 SCC 526.
38 *Fazal Ghafoor* v. *Union of India* (1988) Supp SCC 794.

the aspirations of others so that authorities can objectively assess and approach the situation so that national interest can become paramount. The court dismissed the writ petition as far as it pertained to State of Andhra Pradesh and Telangana. As regards State of Tamil Nadu, the court directed that the matter be listed for hearing.

No cancellation of admission if not contrary to rules if on unfilled seats

In *Priya Tiwari* v. *Union of India*,[39] the Supreme Court found that cancellation of admission not contrary to any rules, statutes or ordinances was unjustified. Petitioners were given admission by Medical College, West Bengal in MBBS course on September, 30 2015 under its management quota. State government failed to send names for admission of students under state quota to medical college. In order to ensure that these seats do not lapse and go unutilized, medical college gave admission to eight students which were in management quota list. These included four petitioners as well. Few writ petitions were filed in this court by certain petitioners who were seeking admission to MBBS/BDS courses under All India Quota wherein order on September 15, 2015 was passed directing that there would not be any admission by state governments from All India Quota. Respondent/state, taking advantage of this order, sent its list to medical college/respondent no. 4 terming the same as "mop up round of online counselling" and in the process cancelled admission of six students including four petitioners. Challenging this action of respondents, present writ petition was filed. The court found that the action of respondents in cancelling admission of four petitioners was clearly unjustified, untenable and illegal. Once these petitioners were validly admitted, there was no reason to dislodge them, that too on basis of "mop up round of online counseling" of state government which was not permissible after September 30, 2015. The court noticed that some other students had already been admitted in medical college/respondent no. 4, and it may not be advisable to cancel their admission when there were many other seats which remained unfilled in other colleges.

Students who did not appear in the entrance test are disentitled to be admitted in the unfilled seats

In *VNS College of Physical Education and Management Studies* v. *State of Madhya Pradesh*,[40] the Supreme Court considered whether students who did not appear in the entrance test were entitled to be admitted in the unfilled seats. Appellants/petitioners, private recognized institutions were aggrieved by impugned orders passed by high court refusing to pass an interim order directing these institutions for conducting counseling and admission to students possessing minimum eligible marks. Petitioners were seeking permission to conduct college level counseling to fill up left over vacant seats. Grievance was that the admissions to students have been restricted to only

39 2015(12) SCALE 454.
40 2015(12) SCALE 384.

those students who have appeared in entrance examination conducted by Vyapam and not open for all students possessing minimum eligibility marks from qualifying examination. According to respondents/State of Madhya Pradesh, against total seats of 53,865 in the State of Madhya Pradesh for B.Ed. course, 63,406 students were allowed online registration. Despite four rounds of counseling, seats in appellant colleges were remaining vacant, which meant that students were not interested in getting admission in these colleges. The court noticed that the entire pool of students who had participated in Vyapam examination was exhausted, and as such, no further counseling could be permitted further. The Supreme Court found that there was no reason to grant any interim relief to appellants/petitioners to conduct a college level counseling and admit students who have not even appeared in entrance test.

Ban of admission to post graduate course for second time not to mean bar on obtaining additional qualifications

In *Sasmita Jamuda* v. *Utkal University,*[41] a division bench of the High Court of Orissa has held that a clause in the information bulletin issued by the University stipulating denial of admission to candidates to post graduate course for the second time cannot be interpreted to discourage obtaining of additional qualifications. It only disallowed a candidate having passed in one post graduate discipline to again prosecute study in same discipline. Information bulletin issued by university stipulated denial of admission to candidate to post graduate course for second time. The court found that qualification of post graduate diploma cannot be equated with post graduate degree and that a candidate having post graduate diploma cannot be denied admission to post graduate degree.

Exclusion of candidates having locomotor disabilities of upper limbs from reservation for admission to MBBS not unconstitutional

In *Deepshikha* v. *Medical Council of India*,[42] a division bench of the High Court of Delhi considered the constitutional validity of clause 4(3) of MCI Graduate Medical Education Regulations, 1997 to the extent it restricts 3% reservation to the persons with locomotor disability of lower limbs in admission to MBBS courses. Both the petitioners-physically disabled candidates appeared for the AIPMT-2014 and secured rank no.19 and rank no.3 respectively in physically handicapped (PH) category. Disability certificate of first petitioner reflected that the petitioner is suffering from Post Infective Ankylosis Left Elbow and her total permanent physical impairment of left upper limbs is 46%; so far as her physical ability to pursue MBBS course and thereafter to practice as a doctor is concerned, the medical board after independent evaluation opined that she was fit to undergo MBBS course and thereafter to practice as a doctor. Second petitioner's certificate reflecting that he is suffering from "bilateral club hand and bilateral club feet" and has permanent physical impairment of both lower limb and upper limb and

41 AIR 2015 Ori. 193.

42 2015(150) DRJ 387.

that he is not eligible for admission in medical/dental courses as per the MCI/DCI guidelines. Medical board opining that the petitioner is fit to undergo MBBS course except Physiology subject. Notification for AIPMT-2014, providing reservation of 3% seats on horizontal basis for physically handicapped persons of locomotor disabilities of lower limbs was admittedly issued in terms of the Regulations issued by the MCI called Regulations on Graduate Medical Education, 1997 as amended by notification on March 25, 2009. In other words, the candidates having locomotor disabilities of upper limbs were excluded from claiming the benefit of 3% reservation provided under clause 4(3) of the regulations on Graduate Medical Education, 1997 for admission into MBBS/BDS courses. The court found that the clause 4(3) of the said regulations restricting the 3% reservation for the persons with locomotor disability of lower limbs only cannot be struck down on the ground that it is ultra vires the provisions of the Disabilities Act apart from being violative of article 14 of the Constitution of India. The court relied on the decisions in *Transport and Dock Workers Union* v. *Mumbai Port Trust,*[43] *Subramanian Swamy* v. *Director, CBI,*[44] *S. Seshachalam* v. *Bar Council of Tamil Nadu,*[45] and *MCI* case.[46]

The court expressed its pious wish though it did not grant the remedy to the persons with disabilities: "May be that it is open to MCI to have a re-look at the issue in the light of the said Notification dated 29.07.2013 issued in terms of section 32 of the Disabilities Act identifying the posts of Medical Officers and the posts of Physicians (Non- surgical) as suitable posts for persons with disabilities and to decide whether the 3% reservation provided to the persons with locomotor disability of lower limbs for admission to the Medical course can be extended to the persons with locomotor disability of upper limbs also subject to limitations, if any, however no mandamus as such can be issued by this Court to allow admission to the petitioners since the same would amount to compelling the respondents to act contrary to the statutory regulations as they stand as of today."

The court considered the effect of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and held that the 1997 Regulations are statutory regulations and are made by MCI which is an expert body and competent authority under the Indian Medical Council Act, 1956 to prescribe the qualification and standards of medical education. The court preferred that a harmonious approach had to be made while interpreting such enactments so as to make both the enactments workable.

43 (2011) 2 SCC 575.

44 (2014) 8 SCC 682.

45 (2014) SCC Online SC 1011.

46 (2013) 6 Mad LJ 225 (DB).

VI DEGREE AND QUALIFICATION

Prescription of educational qualification for those seeking election to Panchayats not unreasonable

In *Rajbala* v. *State of Haryana*,[47] the Supreme Court has held that the prescription of educational qualification for those seeking election to panchayats in the State of Haryana cannot be said to be making an unreasonable classification among the voters attracting the wrath of article 14. The impugned provision creates two classes of voters - those who are qualified by virtue of their educational accomplishment to contest the elections to the panchayats and those who are not. The proclaimed object of such classification is to ensure that those who seek election to panchayats have some basic education which enables them to more effectively discharge various duties which befall the elected representatives of the panchayats. The court found that the object sought to be achieved cannot be said to be irrational or illegal or unconnected with the scheme and purpose of the Act or provisions of part IX of the Constitution. According to the court, it is only education which gives a human being the power to discriminate between right and wrong, good and bad; therefore, prescription of an educational qualification is not irrelevant for better administration of the panchayats. The court concluded that the classification cannot be said to be either based on no intelligible differentia unreasonable or without a reasonable nexus with the object sought to be achieved.

The court went on with its reasoning: The only question that remains is whether such a provision which disqualifies a large number of persons who would otherwise be eligible to contest the elections is unconstitutional. On examination of the scheme of the Constitution it is found that every person who is entitled to vote is not automatically entitled to contest for every office under the Constitution. Constitution itself imposes limitations on the right to contest depending upon the office. It also authorises the prescription of further disqualifications/qualification with respect to the right to contest. No doubt such prescriptions render one or the other or some class or the other of otherwise eligible voters, ineligible to contest. When the Constitution stipulates undischarged insolvents or persons of unsound mind as ineligible to contest to Parliament and legislatures of the states, it certainly disqualifies some citizens to contest the said elections. May be, such persons are small in number. Question is not their number but a constitutional assessment about suitability of persons belonging to those classes to hold constitutional offices. If it is constitutionally permissible to debar certain classes of people from seeking to occupy the constitutional offices, numerical dimension of such classes, should make no difference for determining whether prescription of such disqualification is constitutionally permissible unless the prescription is of such nature as would frustrate the constitutional scheme by resulting in a situation where holding of elections to these various bodies becomes completely

47 AIR 2016 SC 33.

impossible. Therefore, section 175 (1) (v) as inserted by 2015 amendment which disqualifies a large number of persons who would otherwise be eligible to contest the elections is not unconstitutional.

The court also considered the amended clause which disqualified person from contesting a panchayat election who has no functional toilet at his place of residence. The court found it not unconstitutional since those not following basic norms of hygiene are ineligible to become administrators of civic body. The court found that the amendment disqualifying such persons from seeking election cannot be held to create class based on unintelligible criteria.

Prescribing educational qualifications for contesting elections to panchayat unconstitutional

In *Dulari Devi* v. *State of Rajasthan,*[48] a division bench of the Rajasthan High Court considered the Rajasthan Panchayati Raj Act (13 of 1994) section 19(Amended by Ordinance no. 2 of 2014) prescribing educational qualifications for contesting elections as members of zilla parishad or panchayat samiti and sarpanch of panchayat and found it *prima facie* violative of article 14 of Constitution. The court was of the view that in the State of Rajasthan in which the rate of literacy and the opportunity of formal education was limited, the prescription of any disqualification on the ground of qualification for contesting elections in the panchayati raj institutions, excluding the masses, who did not have an opportunity of formal education, is *prima facie* violative of the right of equality under article 14 of the Constitution.

It would be interesting to notice the reasoning of the high court in this case in comparison with that of the Supreme Court as above in Haryana case. The high court reasoned as follows: The Panchayati Raj Institutions foster democratic principles of governance at the grass root level. Article 40 in part IV (Directive Principles of State Policy), provided for an organisation of village panchayats. The State was under an obligation to take steps to organise village panchayats and endow them with such powers and authority as may be necessary, to enable them to function as units of self-government. The panchayat, defined under article 243(d), is provided as an institution of self-governance constituted under article 243-B, for rural areas. The entire body of villagers is given rights to participate in the meetings of the Panchayat for inclusive self governance, self rule and self determination for social upliftment, which is not dependent on any educational qualification. The disqualification for membership, under article 243-F of the Constitution, to be prescribed by the legislature of the state, could not have provided for any such condition attached, which may have taken away the rights of the self governance, except for disqualifications, which have material object to achieve, such as the character, integrity or morality of the person to represent. The persons who are engaged in unlawful activities or are defaulters, or acquired any disqualification which may have any nexus with the object, sought to be achieved, namely for representation, may be excluded participation in panchayats. Any other

48 AIR 2015 Raj 84 (Jaipur Bench).

disqualification will negate the object of self governance at grass root level, peoples participation, and social justice.

The high court further explained its logic almost opposite to the one deployed by the Supreme Court in the Rajbala case: In order to lead in a democratic governance, a person is required to understand the needs of social development and require the mental attribute of being wise in the estimation of the people, who elect her for representation. Any law which disqualifies a large section of rural population on the ground of non attaining the educational qualifications, is thus, prima facie, arbitrary, irrational and unreasonable. It cannot be said that large amount of money placed in the hands of the sarpanchas, issuance of cheques by them, preparation of accounts and their official capacity as an appellate authority under the RTI Act, 2005, or any government order, which may make them accountable, would require a minimum educational qualification inasmuch as every panchayat is provided with secretariat, which includes a panchayat assistant, an accountant and a junior engineer. It is, therefore, not necessary for a sarpanch to have minimum educational qualifications for representation of her people in the panchayat, or zila parishad. She has sufficient assistance of persons with minimum qualification to advise her for proper discharge of her duties and functions. The formal education may have relevance in the future when the goal of universal primary education is achieved.

VII EDUCATIONAL INSTITUTIONS

Any relaxation in time schedule for increase of seats for medical admission impermissible

The Supreme Court considered the permissibility to increase in intake capacity after the prescribed time in the case of *Padmashree D.Y. Patil Medical College* v. *Medical Council of India.*[49] The petitioner claimed to have filed application for increase in intake capacity on August 30, 2014 for academic session 2015-16. Essentiality certificate could not be submitted by petitioner as it had not been issued to it by Government of Maharashtra. It was issued on September 3, 2014 and was submitted to Central Government on September 5, 2014. On October 16, 2014 Central Government returned application on ground that essentiality certificate and consent of affiliation were not submitted by petitioner along with proposal. Petitioner filed present special leave petition aggrieved by judgment passed by division bench of high court thereby reversing judgment and order passed by single bench in matter of increase of seats for MBBS course from 150 to 250 from academic session 2015-16. The Supreme Court held that the application at first instance was required to be complete and incomplete applications are liable to be rejected. Thereafter, there has to be an inspection and other stages of decision-making process. Time schedule is required to be strictly observed. Hence, it would not be appropriate to issue any direction for consideration of petitioner's case for ongoing academic session 2015-

49 (2015) 10 SCC 51.

16 in which inspection is yet to be made. It is too late in day to direct inspection for session 2015-16 as all dates fixed in time schedule are over and fixation of time schedule has a purpose behind it and from a particular date session has to commence and part of seats to be filled by a competitive examination held on all-India basis. Any relaxation in time schedule would make holding of examinations on an all India basis a farce and several complications would arise. Thus, it was directed that application which had been submitted by college for academic session 2015-16 be considered for next academic session, subject to fulfillment of other requisite formalities, as may be necessary, and thereafter MCI shall conduct an inspection well-in-time as per time schedule fixed under Regulations of 1999. SLP dismissed with said modification. The court relied on its decisions in *Mridul Dhar (Minor)* v. *Union of India*,[50] *Medical Council of India* v. *Manas Ranjan Behera*,[51] *Priya Gupta* v. *State of Chhattisgarh*.[52] The court took note of the facts that the MCI is required to undertake inspections and thereafter is required to point out the deficiencies to institutions, invite comments and send its recommendations to the Central Government. There are various stages which are time-consuming and the schedule has a purpose of bringing uniformity of commencement of academic session at the same time.

Court cannot direct approval of new medical college

Can a court issue directions in a case of the establishment of a new medical college where MCI has made a recommendation of disapproval of the scheme. The main issue in *Poonaiyah Ramajayam Institute of Science and Technology Trust* v. *Medical Council of India*,[53] considered by the Supreme Court. The petitioner had submitted an application for establishment of a new medical college for academic year 2015-2016. Application was rejected on the ground that essentiality certificate and consent of affiliation were not submitted before the cut-off date; however, petitioner was given liberty to apply for next academic year. Petitioner moved the high court. The single judge allowed the writ petition and directed MCI to consider application of the petitioner and make recommendations. By impugned order, division bench allowed appeal of the respondent and set aside judgment of single judge. Petitioner/trust preferred SLP. In compliance of the directions of the Supreme Court, respondent/MCI conducted inspection and submitted its report in a sealed cover. The court found that the executive committee decided to apply clause 8(3)(1)(d) of Establishment of Medical College Regulation (Amendment), 2010 and further decided to return the application for establishment of a new Medical College of petitioner to Central Government recommending disapproval of the scheme for academic year 2015- 2016 and 2016-2017. The court held that it is for the Central Government to

50 (2005) 2 SCC 65.
51 (2010) 1 SCC 173.
52 (2012) 7 SCC 433.
53 (2015) 10 SCC 83.

approve or disapprove and to take a final decision on report of executive committee of council and no directions can be issued to the respondent to consider the case of the petitioner-college for academic year 2015-2016 and 2016-17, since matter is yet to be decided by Central Government. Hence, it is for the petitioner to move appropriate forum as against decision of disapproval for academic year 2016-2017. The court relied on the decision in *Padmashree D.Y. Patil Medical College* v. *Medical Council of India*.[54]

Not to grant ante-dating of recognition to college

In *Baba Shiv Nath Singh, Shikshan Evam Prashikshan Sansthan* v. *National Council for Teacher Education,*[55] the Supreme Court considered the propriety of ante-dating the recognition of the colleges for teachers education course. The court declined to grant such antedating. BTC course is a two year course divided into four semesters. Petitioners have been granted recognition by National Council for Teacher Training (NCTE) for the year 2015- 2016 for conducting teacher education course/D.El.Ed. (BTC) course. On the ground that academic session of year 2015-2016 was yet to commence and such commencement will be inordinately delayed as Academic Session of previous year *i.e.,* 2014-2015 is yet to start these writ petitions had been filed for ante-dating recognition of petitioner-colleges either to academic session 2013-2014 or academic session 2014-2015, as may be. The said claim was sought to be countered by respondent nos. 3 and 4 in their counter affidavit by stating that academic session 2014-2015 which is already delayed will get further delayed by at least six months if prayers made in writ petitions are to be allowed. The court found that as to the suggestion of petitioners to declare either academic year 2014-2015 or 2015-2016 as a 'zero' year and make academic session of both years into one *i.e.,* 2014-2016, such course of action would not be proper unless all Institutions and representatives of students who may be affected are present and heard. Writ petitions were disposed of specifically by refusing prayers for ante-dating of recognition granted by NCTE to petitioner colleges, and issued directions regarding commencement of academic session 2014-2015, and 2015-2016 and closure on completion of mandatory number of working days at the earliest and without any delay. The court relied on the decision in *Maa Vaishno Devi Mahila Mahavidyalaya* v. *State of Uttar Pradesh*.[56]

Imparting education cannot be treated as a trade or business but only as a religious or charitable activity

In *DM Wayanad Institute of Medical Sciences* v. *Union of India,*[57] the Supreme Court held that the right to establish institutions for imparting medical and technical

54 *Supra* note 49.
55 2015(10) SCALE 65.
56 (2013) 2 SCC 617.
57 (2016) 2 SCC 315.

education is not a fundamental right and a writ petition under article 32 of the Constitution of India is not maintainable for enforcing such a right. It relied on the decision in *Unni Krishnan's* case,[58] Relying on the said decision by a constitution bench the Supreme Court held that "education has never been nor can it be allowed to become commerce in this country. Education has always been treated, in this country, as a religious and charitable activity and making it commercial is opposed to the ethos, tradition and sensibilities of this nation...".[59]

Order rejecting application for running Masters of Computer Application(MCA) course quashed for violating natural justice

In *Government Mohindra Instt. of Information Technology* v. *All India Council for Technical Education*,[60] the Supreme Court quashed the order rejecting the application for running a MCA course. The court considered the non-production of letter pointing out removal of deficiencies violated the principles of natural justice. Petitioner-college wanted to set up a new technical institute for running MCA course from academic year 2015-16 and submitted an application to respondent no.1. Said application was rejected. All deficiencies, which had been pointed out to Petitioner-College, had been substantially removed and, except for a negligible defect, which respondent no.1 pointed out, there was no reason for rejecting application submitted by petitioner-college. The court found that by not placing letter of petitioner-college dated 24th April, 2015 (pointing out deficiencies removed by petitioner-college) before Standing Appellate Committee, principles of natural justice had been violated and therefore, final order dated 30th April, 2015 passed by Standing Appellate Committee of respondent no.1 was liable to be quashed and set aside. Respondent no.1 was directed to reconsider the case of petitioner-college.

Petitioner-college is a Government College which had been established in the State of Punjab and has been imparting education for the last 140 years. The said institute is the oldest institute in the State of Punjab having a very good reputation and it is not disputed that all deficiencies, which had been pointed out to the petitioner-college, had been substantially removed.

The court directed that the final decision which might be taken by respondent no.1 shall be communicated to the petitioner-college immediately and if the final decision is taken in favour of the petitioner-college, the petitioner shall be permitted to give admission to 60 students to MCA course which it proposes to commence and respondent no.3-university is also directed to do the needful to grant the necessary permission to the petitioner-college with regard to initiation of new course.

58 (1993) 1 SCC 645.

59 (2016) 2 SCC 315, para 15.

60 2015(9) SCALE 14.

Whenever a profit/surplus is made by an educational institution, it does not cease to exist solely for educational purposes and does not become a profit making enterprise for the purpose of income tax

In *Queen's Educational Society* v. *Commissioner of Income Tax*,[61] the Supreme Court reversed the view of the income tax department and the high court that whenever a profit/surplus is made by an educational institution, it ceases to exist solely for educational purposes and becomes a profit making enterprise. The appellant, an educational society filed its return for assessment years 2000-2001 and 2001-2002 showing a net surplus of Rs. 6,58,862/- and Rs. 7,82,632/- respectively. Since the appellant society was established with the sole object of imparting education, it claimed exemption under section 10(23C)(iii-ad) of the Income Tax Act, 1961. The assessing officer rejected the exemption claimed. High court affirmed the order of the assessing officer. The Supreme Court found that the high court did not apply its mind independently. What had been copied by the high court was one paragraph from the Supreme Court judgment in *Aditanar* case[62] followed by a paragraph of faulty reasoning by the assessing officer and the said faulty reasoning of the assessing officer has been wrongly said to be the law laid down by the apex court.

It is clear, therefore, that the High Court of Uttarakhand has erred by quoting a non existent passage from an applicable judgment, namely, *Aditanar* case and quoting a portion of a property tax judgment which expressly stated that rulings arising out of the Income Tax Act, 1961 would not be applicable. Quite apart from this, it also went on to further quote from a portion of the said property tax judgment which was rendered in the context of whether an educational society is supported wholly or in part by voluntary contributions, something which is completely foreign to section 10(23C) (iii ad). The final conclusion that if a surplus is made by an educational society and ploughed back to construct its own premises would fall foul of section 10(23C) is to ignore the language of the section and to ignore the tests laid down in the *Surat Art Silk Cloth* case,[63] *Aditanar* case and the *American Hotel and Lodging* case.[64] It is clear that when a surplus is ploughed back for educational purposes, the educational institution exists solely for educational purposes and not for purposes of profit.

The court set aside the judgment of the High Court of Uttarakhand on September, 24 2007 and the court found that the reasoning of the ITAT (set aside by the high court) was more in consonance with the law laid down by the Supreme Court. Educational institution claiming exemption must exist solely for educational purposes. It should not be for purposes of profit. Aggregate annual receipts of such institution should not exceed the amount or annual receipts as may be prescribed. Where an

61 (2015) 8 SCC 47.

62 *Aditanar Educational Institution* v. *Additional Commissioner of Income Tax* (1997) 224 ITR 310.

63 *CIT* v. *Surat Art Silk Cloth Manufacturers' Assn.* (1980) 121 ITR 1.

64 *American Hotel & Lodging Assn. Educational Institute* v. *CBDT* (2008) 301 ITR 86.

educational institution carries on the activity of education primarily for educating persons, the fact that it makes a surplus does not lead to the conclusion that it ceases to exist solely for educational purposes and becomes an institution for the purpose of making profit.

The relevant section 10(23C) has three requirements-(a) the educational institution must exist solely for educational purposes (b) it should not be for purposes of profit and (c) the aggregate annual receipts of such institution should not exceed the amount or annual receipts as may be prescribed. Such prescription is to be found in Rule 2CA being an amount of Rs.1 crore.

The Supreme Court summed up the law common to section 10(23C) (iiiad) and (vi) as follows:

i. Where an educational institution carries on the activity of education primarily for educating persons, the fact that it makes a surplus does not lead to the conclusion that it ceases to exist solely for educational purposes and becomes an institution for the purpose of making profit.
ii. The predominant object test must be applied-the purpose of education should not be submerged by a profit making motive.
iii. A distinction must be drawn between the making of a surplus and an institution being carried on "for profit". No inference arises that merely because imparting education results in making a profit, it becomes an activity for profit.
iv. If after meeting expenditure, a surplus arises incidentally from the activity carried on by the educational institution, it will not be cease to be one existing solely for educational purposes.
v. The ultimate test is whether on an overall view of the matter in the concerned assessment year the object is to make profit as opposed to educating persons.

The court reiterated that the correct tests which have been culled out in the three Supreme Court judgments stated above, namely, *Surat Art Silk Cloth*, *Aditanar*, and *American Hotel and Lodging*, would all apply to determine whether an educational institution exists solely for educational purposes and not for purposes of profit. In addition, the Supreme Court added that the 13th proviso to section 10(23C) is of great importance in that assessing authorities must continuously monitor from assessment year to assessment year whether such institutions continue to apply their income and invest or deposit their funds in accordance with the law laid down. Further, it is of great importance that the activities of such institutions be looked at carefully. If they are not genuine, or are not being carried out in accordance with all or any of the conditions subject to which approval has been given, such approval and exemption must forthwith be withdrawn.

Exemption from income tax not to be denied if only activity is education

In *Ram Piyari Devi Charitable Trust* v. *Director General of Income Tax*,[65] a division bench of the High Court of Delhi considered the rejection of the application

65 2015(223) DLT 323.

for grant of exemption from income tax. A writ petition was preferred by petitioner/ Trust (running a school) against order passed by Director General of Income Tax (Exemptions) on an application for grant of exemption under section 10(23C) (vi) of the Act, 1961. By impugned order, application of petitioner for grant of exemption under Section 10(23C)(vi), was rejected on the ground that in statement of objects of trust, there are various activities mentioned and, as such, it was held that petitioner is not existing solely for purposes of education as envisaged in section 10(23C) (vi) of the Act. The court found that it was even admitted by the respondents that only activity that petitioner was indulging in was education namely running of a school and no other activity. Merely because some profit is generated does not ipso facto imply that educational institution is existing for profit motive. Impugned order cannot be sustained inasmuch as competent authority went to the stage of post grant of approval for considering whether approval can be granted in the first instance or not. The court issued a writ of mandamus directing respondents to grant approval to petitioner under section 10(23c) (vi) for assessment years 2011-12 onwards. However the court permitted that the assessing authority can go into the question as to whether conditions stipulated in third proviso and 13th proviso to section 10 (23C) (vi) have been met and appropriate orders can be passed by assessing authority in accordance with law. The court relied on the decisions in *American Hotel & Lodging Association, Educational Institute* v. *Central Board of Direct Taxes* [66]; *Digambar Jain Society for Child Welfare* v. *Director General of Income Tax (Exemptions)*[67] and *M/s. Queen's Educational Society* v. *Commissioner of Income Tax.*[68]

The court has held that the inquiry conducted by the director general with regard to the application of funds and generation of profit is to be conducted post the grant of approval. If the above conditions are satisfied, in the first instance, the competent authority is to grant approval. The competent authority is empowered to impose conditions while granting such approval. The inquiry whether the conditions had been complied with or not, as envisaged by the third proviso to section 10(23C), is to be conducted post grant of approval and not as a condition precedent to grant of approval.

Denial of tax exemption on ground of generation of surpluses unjustified

In *Director General of Income Tax (Exemption)* v. *All India Personality Enhancement & Cultural Centre for Scholars Aipe*,[69] a division bench of the High Court of Delhi has held that denial of income ax exemption on the ground of generation of surpluses, was unjustified. Assessee/All India Personality Enhancement and Cultural

66 2008 (301) ITR 86 SC.
67 456 Delhi (329) ITR.
68 372 ITR 699 SC.
69 2015 (223) DLT 721.

Centre For Scholars Aipeccs Society is managing and running a few schools for imparting education to children. The court found that the objects of assessee society are solely for purposes of education and not for purpose of profit. Distribution of surpluses is prohibited. Further, in event of dissolution of assessee society, its assets would have to be transferred to another institution carrying on similar activities and same cannot be distributed to its members. Assessee has been running three schools that are affiliated to CBSE. Thus, exemption under section 10(22) cannot be denied to Assessee only for the reason that it had been generating surpluses.

Benefit of exemption was denied on the ground of investment of funds contrary to section 11(5). Court found that exemption under section 10(22) was not conditional on funds of institutions being invested in the form and manner as required under section 11(5) of the Act. Thus, university and educational institution was free to apply and invest its funds in manner as it deemed fit. Exemption available under section 10(22) and 10(23C) could not be denied to assessee on ground that it had invested its funds contrary to section 11(5) of the Act, as said condition was introduced by fifth proviso to section 10(23C) only *w.e.f.* April 1, 1999 More importantly, assessees who had made their investments which did not conform to section 11(5) of the Act, were by virtue of proviso to section 10(23C) afforded time till March 30, 2001 - a period of three years-to transfer their investments to permissible securities as specified under section 11(5) of the Act. The court relied on the decision in *Director of Income Tax (Exemption)* v. *Prakash Education Society.*[70]

The provisos to section 10(23C) provided for several restrictions and conditions including the extent of income that could be accumulated and the form and manner in which its funds have to be invested, to avail the exemption under section 10(23C) of the Act. It is relevant to note that the aforesaid conditions do not apply to universities and educational institutions, which are covered under clause (iiiab) and (iiiad) of section 10(23C) of the Act but only to those institutions, which seek exemption under clause (vi) of section 10(23C) of the Act.

State cannot shirk its responsibility of ensuring proper and quality education in aided Schools and Colleges on the plea of lack of resources

The supreme court has reiterated the proposition that the plea of lack of resources is not available to the state administration to deny payment of salaries and shirk its responsibility of ensuring proper and quality education in schools and colleges in the case of *State of Kerala* v. *Arun George.*[71] Under Direct Payment Agreement, Government of Kerala had introduced a scheme of direct payment of salaries to teaching and non-teaching staff of private colleges, management of which agree to Government

70 (2006) 286 ITR 288 (Del.).

71 (2015) 11 SCC 334.

control in matters of appointment of teaching and non-teaching staff and in admission of students. 8th respondent/management was granted permission to start new degree/ graduate and post-graduate courses and respondent nos. 1 to 7 were appointed by 8th respondent to various new courses sanctioned by government. Management forwarded proposal for approval of their appointment to the university; but the same was rejected. Respondent nos. 1 to 8 preferred writ petition. High court single judge allowed writ petition holding that the government was liable to pay salary and other allowances to teachers appointed to new courses by managements. In the appeal by the State of Kerala the Supreme Court held that sanction of new courses led to increase of work load and services of respondent nos. 1 to 7 were utilised by eight respondent-management and the courses were purely aided courses and therefore, provisions of direct payment agreement were undoubtedly applicable. It was held that the state administration could not shirk its responsibility of ensuring proper and quality education in schools and colleges on the plea of lack of resources. Respondent nos. 1 to 7 were appointed only against sanctioned posts and their services utilized for imparting instruction, invigilation and other duties. When respondent nos. 1 to 7 were appointed by statutory selection committee, it becomes obligatory for government to honour these appointments and pay the salary. The appeals were dismissed finding that the high court had rightly held that respondent nos. 1 to 7 were entitled to payment of salary for the relevant period.

UGC Regulations on eligibility criteria of vice-chancellor partly mandatory and partly directory

In *Kalyani Mathivanan* v. *K.V. Jeyaraj*,[72] the appointment of vice-chancellor was under challenge on the ground of non-satisfaction of criteria under UGC Regulations 2010 even though the regulations having not been adopted by the state government. Writ petitions were preferred by respondents/writ petitioners praying for issuance of a writ of *quo warranto* directing appellant to show cause under what authority she continued to hold office of Vice-Chancellor, Madurai Kamaraj University. Challenge was mainly on the ground that as per UGC Regulations, 2010, a person to be appointed as vice-chancellor, should be a distinguished academician, with a minimum of 10 years experience as Professor in a University system or 10 years of experience in an equivalent position in a reputed research/academic organization and Kalyani Mathivanan did not satisfy the said criteria. By impugned judgment, high court set aside order of appointment of appellant and allowed the writ petitions, holding that appellant did not satisfy eligibility criteria stipulated by UGC Regulations of Minimum Qualifications for Appointment of Teachers and other academic staff in universities and colleges and measures for maintenance of standards in Higher Education 2010 and that for the appointment as vice-chancellor and non-fulfillment

72 (2015) 6 SCC 363.

of such eligibility criteria cannot be completely white washed on specious plea that UGC Regulations, 2010 are not mandatory. In appeal the Supreme Court held that the UGC Regulations, 2010 is directory for universities, colleges and other higher educational institutions under purview of state legislation since the matter had been left to the state government to adopt and implement the scheme. Thus, UGC Regulations, 2010 is partly mandatory and is partly directory. UGC Regulations, 2010 having not been adopted by State Tamil Nadu, question of conflict between state legislation and statutes framed under central legislation does not arise. Once it is adopted by state government, state Legislation was to be amended appropriately. The Supreme Court allowed the appeals and upheld the appointment of appellant as Vice-Chancellor, Madurai Kamaraj University as made by G.O., Government of Tamil Nadu and set aside impugned common judgment of the Madras High Court. The court relied on the earlier decisions in *State of Tamil Nadu* v. *Adhiyhaman Education & Research Institute*,[73] *Preeti Srivastava* v. *State of M.P.*,[74] and *Annamalai University* v. *Secretary to Government, Information and Tourism Department*.[75]

Courts not to direct additional inspection to increase the medical seats

In *Medical Council of India* v. *Mediciti Institute of Medical Sciences*,[76] the supreme court considered the propriety of the direction by judiciary for additional inspection to increase the seats. Issue involved was of the permission for additional 50 MBBS students for academic year 2015-16. Deficiencies were found on inspection by MCI. In pursuance of some litigation, high court by impugned order had given direction to MCI/appellant to conduct a re-inspection of respondent institute. The Supreme Court found that in view of the fact that all norms had not been fulfilled, which were necessary for purpose of grant of permission to have 50 additional students, it was not just and proper on part of the high court to direct the appellant to have additional inspection. Once apex body supervising education in field of medicine has set-up a particular set of standards, it would not be proper on the part of judiciary to direct that body to digress from standards so fixed. Direction given by high court was set aside. The court relied on the decision in *Manohar Lal Sharma* v. *Medical Council of India*,[77] and *Royal Medical Trust (Regd.)* v. *Union of India*.[78]

Looking at the fact that the norms set up by the appellant had not been fulfilled by respondent no.1, in our opinion, it would not be just and proper to constrain the appellant to carry out one more inspection which is not warranted under any legal

73 (1995) 4 SCC 104.
74 (1999) 7 SCC 120.
75 (2009) 4 SCC 590.
76 2015(13) SCALE 134.
77 (2013) 10 SCC 60.
78 2015 (9) SCALE 68.

provision. It is a well-known fact that if infrastructure of any training institute is not sufficient to train and groom its students, the students, even if they pass out at the final examination, may not turn out to be good professionals.

Rules for deemed university status

In *Viplav Sharma* v. *Union of India*,[79] the Supreme Court considered the framing of the rules for the deemed university status. The Union of India had submitted that the competent authority of the Union of India has consulted with all the statutory bodies, namely, All India Council for Technical Education (AICTE), National Board of Accreditation (NBA), National Assessment and Accreditation Council (NAAC) and University Grants Commission (UGC) and their inputs have been received for framing rules for the purpose of laying down the criteria for a deemed university to continue with university status and the accreditation of the universities. It was also submitted that in the process, some of the universities may also lose their status of deemed university and the accreditation. In the mean time the court permitted the earlier body that was constituted, namely, National Assessment and Accreditation Council (NAAC) decide the accreditation issues as per law pending the exercise by the union of India so that the students can choose the universities. However, it was made clear that any decision given by the NAAC shall be subject to the result of the writ petition, as well as the further deliberations in the backdrop of rules framed by the Union of India.

Writ maintainable against deemed university

In *Janet Jeyapaul* v. *SRM University*,[80] the Supreme Court considered whether a deemed university is an authority under article 12 and whether a writ is maintainable against it. It found that *firstly*, respondent no. 1 was engaged in imparting education in higher studies to students at large. *Secondly*, it was discharging "public function" by way of imparting education. *Thirdly*, it was notified as a "Deemed University" by the Central Government under section 3 of the UGC Act. *Fourthly*, being a "Deemed University", all the provisions of the UGC Act were made applicable to respondent no. 1, which inter alia provided for effective discharge of the public function-namely education for the benefit of public. *Fifthly*, once respondent no. 1 was declared as "Deemed University" whose all functions and activities are governed by the UGC Act, alike other universities then it is an "authority" within the meaning of article 12 of the Constitution.

No bar on deemed university to commence new courses

In *Sam Higginbottom University of Agriculture, Technology & Science* v. *University Grants Commission*,[81] a division bench of the High Court of Delhi

79 (2015)12 SCC 556.
80 AIR 2016 SC 73.
81 2015(225) DLT 638.

considered the power of UGC to impose conditions on deemed Universities. The court found that once the purpose of the enactment of Act is, to establish UGC for determination of standards in Universities and section 12 making it a function of UGC, determination of standards would take within its sweep a provision requiring Universities/deemed Universities to obtain approval or prior approval for commencing a new course/programme or for establishing a new department. Determination of standards in universities cannot be confined to laying down the syllabus, mode of imparting education, the duration of course/programme, qualifications of faculty members, minimum attendance required *etc.* of the programmes/courses offered. It would also take within its ambit, making a provision for taking prior approval for commencement of a new course/programme or for establishment of a new department by satisfying UGC that the standards prescribed therefor exist and the gullible students are not prejudiced.

Respondent issued a letter by which the respondent UGC informed the petitioner university that respondent UGC had never granted any permission/approval to petitioner university to start new courses of Public Health, Pharmaceutical Sciences, Medical Laboratory Technology (MLT) and Nursing. Petitioner University contended that neither 1992 & 2000 Guidelines provided for requirement of prior approval. The court found that the petitioner University is entitled to the declaration that the new departments established by it and the new courses commenced by it prior to coming into force on May 21, 2010 of the 2010 Regulations are valid. The court did not accept the contention of UGC that section 22 prohibits deemed universities from setting up a new department or commencing a new course or programme. The court found that section 22 only conferred an exclusive right in universities to confer degrees. It cannot be read as restricting the right of a deemed university to confer degrees only in those courses/programmes in which it was imparting education at the time of being declared a university no provision of the UGC Act bars a university or a deemed university from commencing any new course/programme of study or from establishing any new department other than the ones in which a deemed university is already imparting education at the time of being notified as a deemed university.

The court referred to the decisions in *Gujarat University, Ahmedabad* v. *Krishna Ranganath Mudholkar,*[82] *Yashpal* v. *State of Chhattisgarh,*[83] *State of Maharashtra* v. *Vikas Sahebrao Roundale*[84], and *DM Wayanad Institute of Medical Sciences* v. *Union of India.*[85]

Educational institutions to foster adherence to fundamental duties

In *Ajeet Gaur* v. *State of U. P.*[86] a division bench of the High Court of Allahabad considered the fundamental duty to respect National Flag and National Anthem and

82 AIR 1963 SC 703.
83 (2005) 5 SCC 420.
84 (1992) 4 SCC 435.
85 AIR 2015 SC 2940.
86 2016 (5) ALJ 311.

also the complaint that Madarsas located in the State of Uttar Pradesh were not unfurling National Flag on Independence Day and Republic Day. The court found that every educational institution irrespective of the institute of affiliation- religious or otherwise - must foster adherence to fundamental duties recognized in article 51A.

VIII STAFF AND SERVICE CONDITIONS

Not to discriminate between teachers and all other employees

In *State of Madhya Pradesh* v. *Mala Banerjee*,[87] the Supreme Court considered the entitlement of all government servants to the benefit of two higher pay scales under the Karamonnati scheme and the correctness of the policy decision granting benefit of Karamonnati to Teachers only with effect from August 1, 2003 thus discriminating between teachers and all other employees and found that it was arbitrary. Lecturers/teachers were eligible for a higher pay scale on completion of 12 years of service. Subsequently, a policy April 19, 1999 known as Kramonnati Scheme was introduced entitling all government servants to the benefit of two higher pay scales, the first on completion of 12 years of service, and the second on further completion of another 12 years. Respondents, all of whom are lecturers/teachers in the employment of the education and tribal welfare department were denied claim for the benefit of the increased pay scales under the scheme. According to the appellants, this scheme applied to all their employees except the teacher cadre. On November 2, 2001, commissioner public instructions sanctioned the second Kramonnati for teachers with effect from April 19, 1999. However, state government took a policy decision granting the benefit of the scheme to teachers only with effect from August 1, 2003 . The court found that there was no basis or justification for discriminating between teachers and all other employees.

Educational qualifications of teachers as per rules to be as at the time of advertisement and the beginning of the recruitment process

In *Prakash Chand Meena* v. *State of Rajasthan*,[88] the Supreme Court has held that the recruitment process must be completed as per terms and conditions in the advertisement and as per rules existing when the recruitment process began. State Public Service Commission published an advertisement on September 3, 2008 inviting applications for recruitment to the post of PTI Gr. II and PTI Gr. III and the educational qualifications for those posts were indicated separately. A combined competitive examination for both the posts was held on October 4, 2009. On December 18, 2009, a news item was published that the state government had directed the commission to treat such candidates also eligible for appointment to the post of PTI Gr III who possess Diploma in Physical Education (B.P. Ed) on the premise that these qualifications should be treated as higher than or equal to certificate in Physical

87 (2015) 7 SCC 698.
88 (2015) 8 SCC 484.

Education (C.P. Ed). The Commission declared the result on October 29, 2010 wherein it declared such applicants also as successful for the post of PTI Gr. III who held the qualification of B.P.Ed and had applied for appointment to the post of PTI Gr. II only. Writ petitions were filed challenging the amendment made in the Rules of 1971 vide notification on December 9, 2011. The Supreme Court found that the respondents had acted against law in treating such applicants successful for the post of PTI Gr. III who held other qualifications but not the qualification of C.P.Ed. and that the amendment made in the rules *vide* notification December 9, 2011 could not have any bearing on the recruitment process initiated on September 3, 2008.

Prescription of NET/SLET as the minimum eligibility condition for recruitment and appointment of lecturers in Universities/Colleges/Institutions valid

In *P. Suseela* v. *University Grants Commission*,[89] the Supreme Court considered the constitutional validity of the University Grants Commission Act, 1956 under which NET/SLET was prescribed to be the minimum eligibility condition for recruitment and appointment of lecturers in universities/colleges/institutions. The court found that merely because an additional eligibility condition in the form of a NET test is laid down, it does not mean that any vested right of candidates is affected. Such condition would only be prospective as it would apply only at the stage of appointment. Object of the directions of the Central Government read with the UGC Regulations of 2009/2010 are to maintain excellence in standards of higher education. Keeping this in mind, a minimum eligibility condition of passing the national eligibility test is laid down. The court found that there is nothing arbitrary or discriminatory in this. It is a core function of the UGC to see that such standards do not get diluted. There may have been exemptions laid down by UGC in the past, but the Central Government now as a matter of policy feels that any exemption would compromise the excellence of teaching standards in universities/colleges/institutions governed by the UGC. The arguments based on article 14 were also rejected.

Termination not illegal if appointments were not as per the required procedure

In *Bishwanath Das* v. *State of Jharkhand*,[90] the Supreme Court considered the Bihar Nationalised Secondary School (Condition of Service) Rules, 1983 and found that the termination was not illegal if appointments were not as per the required procedure laid down in the rules. Several sanctioned posts of clerks were lying vacant in nationalised high schools/government high schools. Considering request of Head Masters, a meeting of district selection committee was convened and resolution was passed for immediate appointment of clerks. An advertisement was notified on notice boards of all concerned offices of district on same date and communication was also sent to employment exchange of district inviting applications and sponsoring of names

89 (2015) 8 SCC 129.

90 2015 AIR SC 3518: 2015(9) SCALE 54.

of eligible candidates for appointment from them. Appellants (who were also registered with employment exchange) applied for appointment. Applications were scrutinized by district selection committee and shortlisted candidates along with appellants were called for an interview. Appellants were issued letters of appointment by the then district education officer and appointed them in posts of clerks in various schools. Based on report of deputy collector, state government terminated irregular appointments made by the then district education officer. Appellants approached high court. High court dismissed petitions holding that they were illegally appointed on posts of clerk without following procedure prescribed in rules, 1983. In appeal the Supreme Court held that the procedure of appointment against class III posts as laid down by state *vide* circular no. 16440 on December 3, 1980 issued by personnel administrative department of undivided State of Bihar. Advertisement memo on December 8, 1989, relied upon by appellants, was not published by district head *i.e.*, district magistrate/deputy commissioner of district. Same was published by district superintendent of education, in his own office and only copy of same was forwarded to block level and headquarter of education department. A copy was forwarded to district employment officer, but nothing was on record to suggest that it was actually received by employment exchange. Therefore, finding of fact recorded in report by Deputy Collector, Dumka that no advertisement was published in any newspapers was accepted. While appointing appellants, circular no. 16440 on December 3, 1980 had not been followed. The Supreme Court found that the high court rightly dismissed petitions challenging order of termination of their service. The court relied on the decision in Secretary, *State of Karnataka* v. *Umadevi*.[91]

Even a single post in college can be filled by promotion

Would filling up of a single post of class III by promotion amount to reservation and hence be impermissible? This was considered by the Supreme Court in *Akhilesh Kumar Singh* v. *Ram Dawan*.[92] First respondent was appointed as Daftari on July 1, 1975 in a recognised Intermediate College in Uttar Pradesh and he became a permanent employee with effect from October 13, 1981. He passed high school education in the year 1997 and thereafter intermediate examination in 2000. As a consequence he became eligible for promotion to the post of clerk. Authorities advertised in a newspaper for filling up of post of clerk through direct recruitment and because of said advertisement, approval for post of promotion as far as first respondent is concerned was not given and he felt aggrieved thereby. Appellant was appointed. First respondent invoked jurisdiction of the high court. The division bench framed the issue as to whether a single post of class III available in an intermediate college governed by the Act could be filled up only by promotion or by direct recruitment.

91 (2006) 4 SCC 1.

92 AIR 2015 SC 3740.

Division bench held that a single post of class III available in intermediate college governed by the 1921 Act can be filled up by promotion. In appeal the Supreme Court found that the concept of reservation finds place in article 16(4) and does not apply to concept of quota from feeder cadre. In instant case, Regulation provides for 50% of total number of posts to be promoted through promotion. The "Note" appended is an inseparable part of regulation and it lays down that in calculation of 50% of the post less than half would be left and half or more than half post would be deemed as one. Therefore, if a singular post in clerical cadre is there, it would be filled up by promotion from amongst eligible candidates from feeder cadre. Adopting such a method or taking such a route does not remotely touch the idea of reservation. The court relied on the decisions *Post Graduate Institute of Medical Education & Research, Chandigarh* v. *Faculty Associatio*n;[93] *State of Punjab* v. R.N. Bhatnagar,[94] and *Kuldeep Kumar Gupta* v. *H.P. State Electricity Board*.[95]

Post of Principal of aided Polytechnic to be by promotion as per rules

In *Pramod* v. *State of Maharashtra*,[96] the Supreme Court considered whether as a senior most lecturer in a private polytechnic institution administered by Shri Shiva Ji Education Society/Respondent no.4, the appellant was entitled to be considered for appointment to post of principal because it was required to be made only by promotion by virtue of rule 3 of MEPS Rules the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. The court found that the high court erred in law in holding that mode of appointment by promotion under rule 3(3) of MEPS Rules cannot be applied to a polytechnic although it is a school because there was no separate qualification prescribed for a polytechnic in sub-rule(1) of rule 3. The said sub-rule contained qualifications and appointment of Head not only for primary schools but also for secondary school including night school or a junior college of education. Since appellant was admittedly senior most member of teaching staff in polytechnic at relevant time, as also held in earlier judgment of high court when he was declared entitled to all benefits of In-charge Principal of polytechnic since July 9, 2007, appellant could not have been denied appointment by promotion to the vacant post of principal. Respondent-director erred in rejecting the appellant's claim and in not issuing directions for his appointment by promotion while passing the order on representation of appellant and rejecting the same on October 17, 2012. The Supreme Court also found that the Rules of 2012 will not apply to private aided polytechnic such as the respondent's polytechnic. As a result there is no other statutory Act or rule to take away the force of Rule 3(3) of the MEPS Rules which requires the management of the polytechnic, which is covered by the definition of the 'School' under the MEPS

93 (1998) 4 SCC 1.
94 (1999) 2 SCC 330.
95 (2001) 1 SCC 475.
96 AIR 2016 SC 204.

Act, to fill up the post of the Head of Institution, *i.e.*, the principal by appointing the senior most member of the teaching staff in accordance with the guidelines laid down in schedule 'F' from amongst the teachers employed in the school. It was not in dispute that respondent-polytechnic is the only polytechnic run by the Management.

Relaxation of qualification for teachers by State Govt contrary to RTE Act unconstitutional

In *Anand Kumar Yadav* v. *Union of India*,[97] a full bench of the High Court of Allahabad considered the power of the state government to relax the qualifications for teachers prescribed by the Central Government as per the RTE Act. The court considered the Uttar Pradesh Right of Children to Free and Compulsory Education Rules (2011), and the appointment of Shiksha Mitras not possessing requisite qualification on cutoff date. The court also found that the experience gained by them over course of their engagement cannot be a substitute for essential qualification statutorily prescribed. The plea that the experience gained by Shiksha Mitras over the course of their engagement should obviate the need of obtaining the essential qualification would not be tenable. The court found that the acceptance of this plea would have grave ramifications, fall foul of settled precedent on the subject and be against the basic tenets of article 16 and principles governing public employment.

The court found that the state government has sought to grant regularization to persons who failed to fulfil the minimum qualifications and who were never appointed against sanctioned posts. In these circumstances, the grant of largesse by the state government to Shiksha Mitras could not be upheld and the amendment to the Rules is *ultra vires* and unconstitutional. The amendment made by the state government by its notification on May 30, 2014 introducing the provision of Rule 16-A in the Uttar Pradesh Right of Children to Free and Compulsory education Rules, 2011 by the Uttar Pradesh Right of Children to Free and Compulsory education (First Amendment) Rules, 2014 was held to be arbitrary and *ultra vires* and was quashed and set aside.

Parity of pay-scale with similar group D employees of the same school

In *Maharaja Agrasen Model School* v. *Workmen*,[98] the High Court of Delhi considered whether workmen under the school were entitled to parity of pay scale under section 10 of the Delhi School Education Act, 1973. The respondents/workmen had raised an industrial dispute on the ground that the petitioner school was found to be discriminating similar Group 'D' employees on the basis of wages given to them. Some of the employees of School were given wages as per their necessities of life, but other employees of similar grade, *i.e.*, respondents were not being given wages as per their requirement but as per Minimum Wages Act, 1956 which was less than the wages received by other employees of school. The tribunal in the impugned award observed that MW1, Principal of School, in her cross-examination deposed that Tara

97 2016 LAB. I.C. 123 (Allahabad High Court) full bench.

98 2015(217) DLT 593.

Chand working as a Peon and was being paid wages according to recommendations of 6th Pay Commission, and held entitled to get wages as per recommendations of 6th Pay Commission from date of granting same to other similar employees of petitioner School. The court found that the petitioner school had admitted that the benefits of 6th Pay Commission were being paid to Group 'D' Employees of School and therefore there was no justification in paying only minimum wages to respondents/workmen. It was held that the findings of fact recorded by tribunal cannot be disturbed so long as they are based upon some material relevant for purpose. The court referred to the decisions in *Veena Sharma* v. *The Manager, No. 1 Air Force School*,[99] *Cambridge School Teachers' Association* v. *Lieutenant Governor*,[100] and *Umed Singh* v. *Presiding Officer*.[101]

The court noticed that the petitioner did not mention in their written statement filed before the tribunal that the respondents were temporary employees and were not entitled to the benefit of 6th Pay Commission. Moreover, a suggestion was put to the principal in her cross-examination that the respondents were entitled to get wages according to the recommendations of the 6th Pay Commission. Even thereafter, the petitioner failed to lead any evidence regarding the qualifications, appointment and status of the respondents/workmen.

Principals also entitled to automatic reemployment in the same manner as teachers

In *Manohar Lal* v. *Govt. of NCT of Delhi*,[102] a division bench of the High Court of Delhi considered whether the notification on January 29, 2007 permitted 'automatic re-employment' of principals and vice principals of the school as well. Chief Minister of Delhi on September 5, 2006 announced the enhancement in the age of retirement, of teachers employed in schools, from 60 years to 62 years. The notification dated 29th January, 2007 permitted 'automatic re-employment' of teachers till the age of 62 years beyond the age of 60 years. The court found that a teacher when promoted as vice principal or principal does not cease to be a teacher and that the principal or vice principal are also entitled to the benefit of notification January 29, 2007. The court held that the contention of the appellant that there is distinction between 'extension' and 're-employment' was not sustainable since present case was not concerned with 'extension' beyond the age of 58 years for a period of two years but only concerned with 'automatic re-employment' beyond the age of 60 years for a period of two years under the notification on January 29, 2007 which uses the word 're-employment' and not 'extension'. The court relied on the decisions in *Sushma Nayar* v. *Managing*

99 2005(84) DRJ 306.

100 1996 LAB IC 1803.

101 W.P.(C) No. 6847/2009, decided on December 19, 2013.

102 2015(219) DLT 140.

Committee, Delhi Public School,[103] *Shiva Ditta Juneja* v. *Director of Education,*[104] *Dharam Singh* v. *The Chief Secretary,*[105] and *Shashi Kholi* v. *Director of Education.*[106]

Termination of teacher dispensing with enquiry justified on the ground of immoral behaviour towards girl student

In *Udai Singh* v. *Kendriya Vidayalaya Sangathan,* [107] a division bench of the High Court of Delhi considered article 81(d) of the Education Code for Kendriya Vidyalaya Sangathan, 1965 and found that the termination of a teacher dispensing with enquiry was justified when it was on the ground of immoral behaviour towards a girl student. Petitioner was employed as a Post Graduate Teacher (PGT) with respondent School. Complaint was made against him, by a girl student of class XII, alleging sexual harassment. On the basis of report given by the enquiry committee, service of petitioner was terminated by the commissioner, KVS and was confirmed by Vice-Chairmen (Appellate-Authority), KVS. Petitioner preferred an original application before tribunal which was dismissed by the impugned order. The court found that the complainant was a girl student of class 12 and in her complaint, she had levelled allegation of immoral behaviour on the part of the petitioner who being in a dominating position was trying to pressurise the complainant to have sexual relationship with him and therefore, the present case was a fit case where article 81(b) of Education Code of Kendriya Vidyalaya Sangathan was invoked by commissioner of respondent as in a case of this nature holding of regular enquiry under CCS (CCA) Rules 1965 can result in causing serious embarrassment to the complainant and her family members. Petitioner was one of the members with whom enquiry committee had interacted. Enquiry committee based on the statement of complainant girl, her father and other members of staff and after conducting due enquiry came to conclusion that petitioner had misused his position as a teacher. The court found no reasons to disagree with well reasoned order passed by tribunal thereby dismissing original application preferred by the petitioner. The court relied on the decision in *Jwala Singh* v. *Union of India*.[108]

In a similar case a division bench of the High Court of Karnataka also found that in a case of a complaint of sexual harassment of a girl student constitution of Summary Inquiry Committee (SIC) instead of holding an inquiry under CCA Rules is proper in *D. J. Rathod* v. *Union of India*.[109] The court also held that exposing child of tender

103 MANU/DE/114/9/2009.
104 MANU/DE/2062/2011.
105 W.P.(C) No.4703/2011 Order dated 8th July, 2011(Del)(DB).
106 MANU/DE/1318/2012 (DB).
107 2015(221) DLT 503.
108 120(2005) DLT 382.
109 2016 (1) AKR 150 ; 2016 LAB. I.C. 687 (Kar. HC).

age to full-fledged inquiry under rules would have caused immense trauma to the child during examination and cross-examination, therefore decision of School to resort to SIC by three members committee was just and appropriate in the facts of the case. The court also noticed that the details of harassment include beating, slapping, beats on backside and telling girl child that he beats her with love, taking photographs of girls in mobile phones, blackmailing, pushing, pulling hairs, tickling or misbehaving etc. It was also stressed by the court that teachers are expected to maintain high degree of rectitude.

No deemed confirmation of staff under Delhi School Education rules

In *Jai Prakash* v. *School Management of ITL Public School,* [110] a division bench of the High Court of Delhi has held that Rule 105 of Delhi School Education Rules, 1973 cannot be interpreted to be imbibing a concept of deemed confirmation in the absence of any specific stipulation on said count.

Appellant (Jai Prakash) was appointed in the respondent school and was placed on probation for a period of one year. His period of probation was extended for another year *i.e.* up to June 30, 2009 and by order on June 16, 2009, respondent management terminated the services of appellant. The tribunal set aside the order of termination and directed reinstatement of his services with 50% back wages holding that termination of service was based on assumption that services came to an end automatically on completion of period of probation. By impugned judgment, single judge set aside the order passed by the tribunal and held that services of Jai Prakash will be taken to have been terminated from the school in terms of letter on July 16, 2009. In LPA by Jai Prakash it was found that neither his period of probation has been extended nor was he confirmed. Further, by giving Jai Prakash a letter stating that his work and conduct during the period was satisfactory so that no stigma is attached and he can seek employment in any other institution, management cannot be faulted for their benevolent act. The court found no infirmity in the impugned order passed in W.P.(C) setting aside the order passed by Tribunal directing reinstatement and 50% back wages. The court relied on the decisions in *Head Master, Lawrence School, Lovedale* v. *Jayanthi Raghu*;[111] *G.S. Ramaswamy* v. *Inspector General of Police;*[112] *State of U.P*. v. *Akbar Ali Khan*:[113] *State of Punjab* v. *Dharam Singh;*[114] *Samsher Singh* v. *State of Punjab;*[115] *High Court of Madhya Pradesh* v. *Satya Narayan Jhavar*[116] and *Rajender Singh Chauhan* v. *State of Haryana*.[117]

110 2015(222) DLT 157.
111 (2012) 4 SCC 793.
112 AIR 1966 SC 175.
113 AIR 1966 SC 1842.
114 AIR 1968 SC 1210.
115 (1974) 2 SCC 831.
116 (2001)7 SCC 161.
117 (2005) 13 SCC 179.

Though the order dated June 16, 2009 terminating the service of Jai Prakash ostensibly on the count that his probationary services comes to an automatic end on June 30, 2009 may not be very happily worded but the intention of the management was explicit that neither his period of probation has been extended nor he is confirmed. Further, by giving Jai Prakash a letter dated August 11, 2009 stating that his work and conduct during the period was satisfactory so that no stigma is attached and he can seek employment in any other institution, the management cannot be faulted for their benevolent act. The logic of the reasoning is clear. If, as in situation two a maximum period for probation is provided with a negative stipulation that beyond said period probation cannot continue, it follows automatically that if the probation continues beyond the maximum period it has to be treated as a case of deemed confirmation for the reason the negative stipulation prohibiting continuation of probation beyond the maximum period prescribed must take its effect.

IX MINORITY EDUCATIONAL INSTIUTIONS

Appeal against order of termination of an employee of a minority institution before educational appellate tribunal maintainable

In *Dharmasthala Manjunatheshwara Education Society, Ujre, Kannada* v. *Bharti*,[118] a division bench of the High Court of Karnataka has held that the State can regulate the service conditions of the employees of minority educational institutions, as long as such regulations do not interfere with the over all administrative control by the management of the staff or abridge/dilute, in any manner the right to establish and administrator educational institutions. Therefore, it would be incongruous to construe that any law intended to regulate the service conditions, such as provisions for filing an appeal to redress the grievances of an employee takes away the right of the management to establish and administer the minority educational institutions under article 30(1) of the Constitution. Thus, where the services of respondent, Assistant Librarian were terminated by the college, the appeal against the order filed by the respondent under section 94 of the education Act would be maintainable.

Minority management schools are to be governed by education law except the mandate of section 12 of the RTE Act

In *Sindhudurg Zilla Shikshan Sanstha* v.*Union of India*,[119] a division bench of the High Court of Bombay has considered the applicability of the RTE Act to the minority-run schools. The court noticed that the challenge in the present case was to the schedule of the Act (2009) of which the constitutional validity was already upheld. There was no case to permit to re-agitate the challenge only to the Schedule and related circulars. All the related aspects revolving around the schedule elaborated in

118 2016 (4) AKR 168.
119 2016 (1) ABR 801.

the circulars needed to be followed by all the concerned. The Central Government and the state are under obligation to implement the governing laws and the education policies. The schedule needs to be read subject to provisions of the governing laws, including the state circulars/GRs so issued from time to time.

The court found that the minority educational institutions are also governed by circulars/grs issued by the government from time to time except for the exception carved out by articles 29, 30 of Constitution of India. It held that so far as the minority management/schools are concerned, the mandate of section 12 of the RTE Act, though not extended, still for all other purposes starting from recognition of school, appointment of teachers, teaching and non-teaching staff, their service conditions and respective duties and obligations of such schools along with the local bodies are governed by these circulars/GRs, so far as the staffing pattern of teaching and/or no-teaching staff, including related service conditions. The provisions of MEPS Act are applicable to all private schools in the State of Maharashtra receiving any grant-in-aid from the state government or not. It deals with the employees of teaching, as well as, non-teaching. All are regulated by the provisions of the Act, Rules and circulars/ GRs so issued from time to time. The minority educational institutions are also therefore, governed by the same, except the exception so carved out by articles 29 and 30 and related laws including recruitment of head of minority schools and other persons as notified. The court found that the present impugned circulars/GRs can in no way said to be disadvantageous to such minority institutions, neither does it disturb the affairs of the management/school and/or selection of the school head.

Several aspects of management of schools like students teachers ratio, workload, *etc* are governed by various circulars/GRs issued by government which have their foundation in provisions of schedule of RTE Act. State education policies and the Circulars/GRs are according to provisions of the Act (2009). Hence they need not be interfered with.

Right of minority institution to appoint head master of its choice

In *Bethal Grace Residential High School* v. *The Regional Joint Director of School Education, Kakinada*,[120] the High Court of Hyderabad has considered the right of minority institution under article 30 of the Constitution of India to appoint the head master of its choice. Senior most teacher is not necessarily to be appointed as head master. School management has the right to appoint anybody among eligible teachers, as head master. The said right cannot be interfered with by the state or educational authority on the ground that the institution is receiving aid from government. The state at the most can only prescribe regulation to ensure excellence of institution. The court found that the unilateral decision to appoint the senior most teachers as head master, taken by the regional joint director of school education, without any recommendation by management, was improper.

120 2015 LAB. I. C. 2829 (Hyderabad).

Minority school to choose vice-principal of its choice

In *Syed Mohd. Akhtar* v. *Managing Committee, Mazharul Islam Secondary School,*[121] the High Court of Delhi found that in appointing an eligible person of its choice as the Vice-Principal by the minority school it did not amount to bias against other eligible teachers and even the presence of the nominee of the Director of Education was not required in the selection committee. Petitioner, an employee of Mazharul Islam Secondary School represented by respondent nos. 1 and 2 was seeking the relief of his being continued as officiating vice principal and thereafter to be appointed on the post of vice principal of the school by setting aside appointment of respondent no.3/Sh. Mushtaq Begg as a vice principal of the school in terms of minutes of DPC of School. Firstly, vague allegation of bias cannot help petitioner in any manner inasmuch as allegation of bias is a very serious aspect and which has to be established to complete satisfaction of court and simple averment of bias without any proof in my opinion cannot be accepted by court to hold that in fact there was a bias. Also, besides chairman there were two other members in managing committee including nominee of Director of Education. Since school was a minority school, in fact, there was no need of even presence of nominee of Director of Education. The court found no fault in the action of the school in appointing respondent no.3 as vice principal of school. The court relied on the decisions in *Queen Mary's School through its Principal* v. *U.O.I.*[122] and *St. Anthonys Girls Sr. Sec. School through Its Manager* v. *Govt. of NCT of Delhi*.[123] The court also found that since the school was a minority school, in fact, there was no need of even the presence of the nominee of the Director of Education.

Minority school also to pay salary in terms of pay commission report

In *Anee Mathew* v. *St. John's School,*[124] the High Court of Delhi considered the claim of salary in terms of 6th Central Pay Commission Report which became applicable to schools in Delhi by virtue of notification of the Director of Education on February 11, 2009. Since petitioner continued to be an employee of respondent no.1/school, her salary would have to be fixed in terms of 6th Central Pay Commission Report and notification of Directorate of Education. However, the court found that the petitioner in view of judgment of Supreme Court in *State of Orissa* v. *Mamata Mohanty,*[125] would be paid higher salary for a period commencing from a date three years prior to filing writ petition, and continuously thereafter in accordance with law, including during the pendency of writ petition.

121 2015(219) DLT 575.
122 2011(185) DLT 16.
123 2013 (205) DLT 744.
124 2015(149) DRJ 661.
125 (2011) 3 SCC 436.

Unaided minority schools to have the power to decide pay and allowances on reinstatement

In *Guru Harkishan Public School* v. *Director of Education*[126] a full bench of the High Court of Delhi has held that Rule 121 of Delhi School Education Rules, 1973 is fully applicable to unaided minority schools which are recognised by the appropriate authority under the Delhi School Education Act, 1973. According to the court it would be a case of reverse and unintended discrimination if it was held that the Rule which empowers the managing committee of a school would apply to all private schools other than minority unaided schools because it would result in a power to manage the affairs of a school established by a minority community being taken away. The court followed the law declared in *Frank Anthony Public School Employees' Association* v. *Union of India*.[127]

Under the scheme of the Delhi School Education Act, 1973, unmindful of its impact on article 30(1) of the Constitution of India which guarantees to all minorities the right to establish and administer educational institutions of their choice, the legislature was of the view that sections 8 to section 11 of the Delhi School Education Act, 1973 should not be made applicable to unaided minority schools and thus section 12 was enacted in the statute. Giving teeth to the statutory provisions of the Act when the Delhi School Education Rules, 1973 were promulgated, it is apparent that even the Rules would reflect a similar exclusion. This explains sub-rule 1 of Rule 96 excluding the applicability of chapter VIII of the rules to unaided minority schools.

Since section 12 of the Delhi School Education Act, 1973 has already been struck down by the Supreme Court in *Frank Anthony's* case its corollary would be that sub-rule 1 of Rule 96 also has to be struck down.

Regarding Rule 121 of the Delhi School Education Rules, 1973 it vests the power in the managing committee of recognised unaided schools to consider and make specific orders with regard to the salary and allowances to be paid to the employee of the school who has been reinstated when an order terminating the services is set aside by the Delhi School Tribunal. It would be a case of reverse and unintended discrimination if it is held that the Rule which empowers the managing committee of a school would apply to all private schools other than minority unaided schools because it would result in a power to manage the affairs of a school established by a minority community being taken away.

The court approved the decision in *Manager Arya Samaj Girls Higher Secondary School* v. *Sunrita Thakur,*[128] and overruled the decision in the case of managing committee *Heera Lal Jain* v. *Chander Gupt Sharma.*[129] It also referred to the decision of the Supreme Court in *Shashi Gaur* v. *NCT of Delhi*.[130]

126 2015(221) DLT 448.
127 (1986) 4 SCC 707.
128 1991(43) DLT 139.
129 W.P.(C) No.7617/2000 decided on January 17, 2006.
130 (2001) 10 SCC 445.

Merely being established or merely being administered by a minority, is not sufficient to claim a minority status

In *Ishan Education Research Society* v. *National Commission for Minority Educational Institutions,*[131] the High Court of Delhi considered the provisions of the National Commission for Minority Educational Institutions Act, 2004 and the amendment of section 2(g) substituting the words 'established and administered' for the expression 'established or maintained' . The court referred to the decisions in *Re: The Kerala Education Bill,*[132] *S. Azeez Basha* v. *Union of India;*[133] *Dayanand Anglo Vedic (DAV) College Trust & Management Society* v. *State of Maharashtra* [134]and *S.P. Mittal* v. *Union of India.*[135]

The court noticed that it could not be the contention of the counsel for the petitioner society that the words 'established and administered' in section 2(g) of the NCMEI Act have to be applied disjunctively and not conjunctively. In this regard, it may be noticed that section 2(g) prior to its amendment with effect from September 1, 2010 defined 'minority educational institution' inter alia as an institution established or maintained by a person or group of persons from amongst the minorities. The legislature having intentionally substituted the words "established or maintained" with the words "established and administered", it cannot possibly be argued that merely being established or merely being administered by a minority, is sufficient to claim a minority status. The court also took notice of article 30(1) of the Constitution of India, where also the words are "establish and administer".

Writ against private minority institution maintainable if it discharges public functions and duties

In *M.S. Frank* v. *Delhi University,*[136] the High Court of Delhi has found that being a minority institution, respondent no.2/college has the right to appointment, which would include right to take disciplinary action, but with a rider that same is subject to safeguards stipulated by Statute/Ordinance. The court relied on the decision in *Sindhi Education Society* v. *Chief Secretary, Govt. of NCT of Delhi*.[137] The court also found that a writ against private institutions would be maintainable if they are discharging public functions and duties. Petitioner was challenging report of enquiry officer, in an Inquiry conducted pursuant to a charge-sheet issued to him, whereby enquiry officer proved certain charges against petitioner and further penalties imposed

131 2015(222) DLT 71
132 AIR 1958 SC 95.
133 AIR 1968 SC 662.
134 (2013) 4 SCC 14.
135 AIR (1983) 1 SCC 5.
136 2015(222) DLT 37.
137 (2002) 8 SCC 481.

on him. Objection was raised on maintainability of writ petition against respondents on ground that college is a minority/private educational institution and even though it receives aid, but still, it is not a 'State' within meaning of article 12 of Constitution. The court found that the respondent nos. 2 is imparting education to students akin to a public function like a Government institution, in terms of Rules & Regulations framed by Delhi University under Delhi University Act, which also governs service conditions of academic staff, like petitioner herein and such service conditions have statutory character as opposed to a private character. Thus ratio of judgments of Supreme Court would make respondent nos. 2 discharging public functions and duties. It also found that the conduct of disciplinary proceedings by respondent nos. 2 and 3 has a public law element and petition seeking reliefs against action of respondent nos. 2 and 3, is maintainable under article 226 of Constitution. The court relied on the decisions in *Shri Anandi Mukta Sadguru Shree Mukta Jeevandasswami Suvarna Jayanti Mahotsav Smarak Trust* v. *V.R. Rudani*;[138] *K. Krishnamacharyulu* v. *Sri Venketaswara Hindu College of Engineering*[139] and *K.K. Saxena* v. *International Commission on Irrigation and Drainage*[140]. The court also distinguished on facts the decisions in *Federal Bank Ltd*. v. *Sagar Thomas* [141]and *Binny Limited* v. *V. Sadasivan*.[142]

The court found that even assuming the grant of 95% aid would not make the respondent nos. 2, 'State' within the meaning of article 12 being a minority institution but there can't be any dispute that the respondent nos. 2 is imparting education to the students akin to a public function like a government institution, in terms of the rules and regulations framed by the Delhi University under Delhi University Act, which also governs the service conditions of the academic staff, like the petitioner herein and such service conditions have statutory character as opposed to a private character.

X CONCLUSION

One of the greatest gifts by the judiciary to the future of this country may be the categorical dictum during the year under survey that in this country and under our Constitution education can never be allowed to become commerce. The Supreme Court and several high courts have again reminded us that education has always been treated, in this country, as a religious and charitable activity and nothing else.[143] Thus the Indian judiciary appears to have come back to its original moorings having strayed a little bit allowing education to be an occupation thus unintentionally opening the doors for its industrialisation.

138 (1989) 2 SCC 691.
139 (1997 3 SCC 571.
140 (2015) 4 SCC 670.
141 (2005) 6 SC 657.
142 (2010) 8 SCC 49.
143 (2016) 2 SCC 315.

The right to education of the children received a very liberal interpretation by several high courts; of course it remains to be seen how these decisions would hold the ground when tested in the Supreme Court. The RTE Act which saw the gradual exclusion of all the minority institutions both aided and unaided from its purview got some ingenious interpretation by some high courts bringing back its effect to these institutions through the doors of fundamental rights of children under article 21 and 21A of the Constitution and the provisions of the state legislations existed prior to the RTE Act.

With regards to the rights of teachers and staff, they were protected from the onslaught of the erring authorities including their pay scales, appointments, promotions and even the disciplinary action including the one by the minority institutions, their rights to defence had to be restricted to some extent to protect the children's right to dignity and privacy. During the year under survey, minority institutions also had a mixed bag protecting their autonomy and at the same time preventing their maladministration when confronted with the constitutional rights of children and teachers.