

IN THE HIGH COURT AT CALCUTTA

CONSTITUTIONAL WRIT JURISDICTION

[CIRCUIT BENCH AT PORT BLAIR]

PRESENT: THE HON'BLE JUSTICE ARIJIT BANERJEE

WPA/554/2025

MISS ROZALIN TIRKEY ... PETITIONER

VS.

NIRMALA SENIOR SECONDARY
SCHOOL AND ANOTHER ... RESPONDENTS

For the petitioner : Mr. Gopala Binnu Kumar

For the respondent no.1 : Mr. Lokesh Chezian, N.

For the respondent no.2 : Mr. V. D.Sivabalan

Heard on : February 02, 2026

Delivered on : February 10, 2026

ARIJIT BANERJEE, J.

1. The respondent no.1, before me, is a minority institution, which enjoys such status under Article 30(1) of the Constitution of India.

2. Vacancy arose in the school in the post of Post Graduate Teacher (PGT) (Biology). A paper publication was

made by the school on July 27, 2023 under the caption “Notice of Recruitment” to the post of Post Graduate Teacher (Biology) under the respondent-school. The essential qualifications for a candidate aspiring to apply were mentioned in the notice.

3. The petitioner participated in the recruitment process and emerged successful. The Selection Committee, which constituted of members of the respondent-school as also a representative of the Directorate of Education, Andaman and Nicobar Administration (respondent no.2 herein), scrutinized the documents of all the applicants. The Committee unanimously recommended appointment of the petitioner to the vacant post of Post Graduate Teacher (Biology).

4. By a letter dated April 15, 2024, the respondent no.2 communicated to the respondent – school that since approval of the respondent no.2 had not been taken prior to initiation of the recruitment process for filling up the vacancy in the post of Post Graduate Teacher (Biology), the

proposal for appointment of the petitioner to the said post could not be approved.

5. Subsequently, with the prior approval of the respondent no.2, the respondent-school again initiated a recruitment process for filling up the aforesaid vacancy for the post of Post Graduate Teacher (Biology). Again, the petitioner participated and was successful. At a Selection Committee meeting held on March 13, 2025, the petitioner's name was unanimously recommended for appointment to the aforesaid post. The merit list was published on the same day where the petitioner's name was at the top, she having secured 69.24% marks.

6. When the matter was placed before the respondent no.2 for approving the appointment of the petitioner, approval was withheld on two grounds. *Firstly*, it was stated that the Recruitment Rules of the respondent-school were not in line with those notified by the Department of Education through Gazette Publication dated November 05, 2019. The essential qualifications prescribed by the respondent-school and the Education Department did not

match. *Secondly*, the holding of a Demo-Class as part of the recruitment process, as prescribed by the respondent-school, is contrary to the Government instructions which have been done away with interview for Group 'C' and Non-Gazetted Group 'B' category and all such equivalent posts. It was stated that the Demo-class is a form of interview and therefore inconsistent with Office Memorandum No.39020/01/2013 dated 29-12-2025 (sic).

7. In response, the respondent-school sent a detailed representation to the Assistant Director (Admn.-II), Directorate of Education with a copy to the Director (Education). In the representation, it was explained in details as to how the essential qualifications prescribed by the respondent-school for the concerned post are higher than and not lesser than the qualifications prescribed in the Recruitment Rules published by the Directorate of Education. It was further stated that the Government instructions by way of Office Memoranda are not binding on minority institutions. Hence, there was nothing wrong with having a Demo-class as part of the recruitment

process. It was also indicated that the extent of Government control over the Management of the minority institutions is minimal and limited to prescribing minimum qualifications for teachers to be recruited with a view to maintaining the standard of institution. Any further intervention would amount to infringement of the minority institution's right under Article 30(1) of the Constitution of managing its own affairs in the manner it deems best.

8. After considering such representation, the Assistant Director (Admn-II), Directorate of Education, issued the following communication dated September 16, 2025, addressed to the Manager of the respondent-school.

"I am directed to refer your letter on the subject cited above and to convey that all the document made available pertaining to recruitment of 01 Post Graduate Teacher(Biology) and the reply of Manager, Nirmala Senior Secondary school, Sri Vijaya Puram has been examined by the Directorate of Education and the shortfalls/deviation which has been observed are as below:-

- 1- The Essential Educational Qualification in the RR of Minority Aided school has to be in line with the RR of the Directorate of Education (In Annexure-III, clause-2). The school has affirmed and informed that their RR contains all essential qualification at par with the Directorate of Education. This has not been complied in the instant case.*

2- *Being funded by the Government, the minority aided school is bound to comply the instructions of the Government of India (excluding those that provide any form of reservation).*

3- *In view of the aforementioned shortfalls/deviations, the proposal for appointing One (01) Post Graduate Teacher(Biology) at Nirmala Sr. Sec. School, Prem Nagar, Sri Vijaya Puram, cannot be considered as of now.”*

9. Being aggrieved, the petitioner is before this Court challenging the said communication dated September 16, 2025.

10. Learned advocate for the petitioner vociferously argued that the respondent no.2 has failed to appreciate the limits of the Government’s power to interfere with the internal affairs of a minority institution including the matter of recruitment of teachers. The respondent-school has framed essential qualifications for the concerned post, keeping in mind the qualifications prescribed by the Government. In fact, the qualifications prescribed by the School are of higher standard. The only constraint is that the qualifications stipulated by the minority institution cannot be lower than those recommended by the Government.

11. Learned counsel further argued that the Government instructions in the form of Office Memoranda are not binding on the minority schools, aided or unaided. Further, no prior permission or approval of the Department of Education is necessary for initiating recruitment process in a minority institution.

12. An aided minority school shall have freedom towards managing its internal affairs. The State can, however, prescribed the minimum qualification of a candidate for being appointed as teacher to ensure minimum standard. Excellence and merits must be the governing criteria for appointment of teachers. In this context, learned advocate for the petitioner relied on the following decisions:

- (a) TMA Pai Foundation and Others vs. State of Karnataka and Others, AIR 2003 SC 355.
- (b) SK Mohd. Rafique vs. Managing Committee Contai Rahmania High Madrasah and others, (2020) 6 SCC 689 (Paragraph 50 to 53).
- (c) Sindhi Education Society and Another vs. Chief Secretary, Government of NCT of Delhi and others (2010) 8 SCC 49 (Paragraph nos.112, 119, 120).

(d) Delhi Tamil Education Association vs. Director of Education and others, High Court of New Delhi, W.P.(C) 15276/2023 and CM APPL.61207/2023, decided on 28.05.2024 (Paragraph nos.49,4.1 and 49.4.2 (page No.767 and 77

13. Referring to his notes of arguments filed in Court, learned advocate for the respondent no.2 primarily submitted that the respondent-school is bound to follow the Recruitment Rules of the Directorate of Education in terms of essential qualifications of teachers. The respondent –school is bound to ensure that the essential qualifications stipulated in its vacancy notice should be similar to the provisions in the notified Recruitment Rules.

14. He submitted that the Recruitment Rules for Post Graduate Teacher (Biology) notified by the Directorate of Education through gazette publication bearing No.280/2019 dated 05.11.2019 stipulates that a candidate “should have studied in the concerned medium at Secondary/Senior Secondary level”. However, the essential qualifications published by the respondent-school, in its vacancy notice for the post of Post Graduate Teacher (Biology) says that a candidate “should have studied in

English Medium from at the Secondary Level/Sr.Secondary /Degree level”.

15. Learned counsel further submitted that there is also variance as regards Hindi language candidates. Whereas the Department of Education Rules stipulates that Hindi language candidates may also be considered if their command over the English language is exceptionally good, the respondent-school's vacancy notice additionally requires that such a candidate should have studied in English medium upto degree level.

16. Learned advocate then referred to the Guidelines for determination of Minority Status, Recognition, Affiliation and related matters in respect of Minority Educational Institutions under the Constitution of India, published by the National Commission for Minority Educational Institutions and submitted that the said guidelines provide that once a Teacher/ Lecturer/ Headmaster/ Principal possessing the requisite qualifications prescribed by the State or the University has been selected by the management of the minority educational institution by

adopting any rational procedure of selection, the State Government or the University would have no right to veto the selection of those teachers etc.

17. Referring to the decision in ***T.M.A Pai Foundation and others vs. State of Karnataka and others (supra)***, learned advocate submitted that the Minority institutions have the freedom to choose their teachers and staff, as the quality and character of an institution depends largely on its personnel. However that right is not absolute. The State may prescribe reasonable regulations to ensure minimum qualifications, eligibility criteria, and service conditions ensuring academic excellence and fairness. However, such regulations must not take away the management's final control over appointments. Any prescription by the State must be limited, non-arbitrary and only for ensuring minimum standards and cannot amount to control over the core management of a minority institution.

18. Learned advocate then referred to the Madras High Court decision in the case of the ***Secretary, Loyola College (Autonomous) vs. State of Tamil Nadu, in W.P.***

No. 19271 of 2023 delivered on March 27, 2025, and submitted that while the State has limited regulatory power over minority educational institutions, such power is restricted primarily to the prescription of minimum qualifications and standards to ensure academic excellence and compliance with affiliating university norms. The State cannot interfere with the process or manner of recruitment, including selection methodology or constitution of selection committees, as these fall within the protected right of administration of minority institutions under Article 30 (1) of the Constitution of India.

19. Then, he drew my attention to the decision of the Delhi High Court in the case of ***Delhi Tamil Education Association vs. Director of Education and others in W.P. (C) 15276/2023 and CM APPL. 61207/2023*** delivered on May 28, 2024, wherein the Court examined the scope of the regulatory authority of the Directorate of Education, Government of NCT of Delhi, in relation to minority institutions protected under Article 30(1) of the Constitution of India. The Court held that such regulatory

powers of the State in respect of minority educational institutions are confined to ensuring maintenance of academic standards and excellence, must be minimal, non-intrusive and non-controlling in nature. The Court emphasized that the extent of regulation by the Directorate of Education is limited to prescribing minimum qualifications and experience of teachers and staff, and that the State or its authorities cannot interfere with the selection process, methodology, constitution of selection committees, or final choice of candidates made by the minority management, once it is established that the selected candidate fulfills the minimum qualifications prescribed by the competent statutory authority.

20. My attention was then drawn to the decision of the Hon'ble Supreme Court in the case of ***Ahmedabad St.Xavier's College Society and another vs. State of Gujarat and another*** reported in ***(1974) 1 SCC 177***. The Hon'ble Court held that the right of a minority institution to administer its affairs including the autonomy to select and appoint its Principal and teaching staff is subject only to

the appointees possessing the minimum qualifications prescribed by the competent statutory authorities and any interference by the State in such choice amounts to an infringement of the fundamental right guaranteed under Article 30(1) of the Constitution.

21. My attention was also drawn to the decision of the Hon'ble Supreme Court in ***Secretary, Malankara Syrian Catholic College vs. T. Jose*** reported in ***2007 AIR SCW 132***, wherein the Court held that once the eligibility conditions and minimum qualifications prescribed by the State or the competent Regulatory Authority are fulfilled, a minority educational institution retains full autonomy to appoint Teachers, Lecturers, Headmasters and Principals through a rational and fair procedure of its choice.

22. Learned advocate then referred to the decision of the Hon'ble Supreme Court in ***State of Bihar vs. Upendra Narayan Singh*** reported in ***(2009) 5 SCC 65*** and submitted that any appointment made in contravention of the statutory Recruitment Rules is illegal from its inception, *void ab initio* and incapable of conferring any right, equity

or entitlement upon the appointee. Referring to the decision in ***State of Orissa vs. Mamata Mohanty*** reported in ***(2011) 3 SCC 436***, learned advocate submitted that the appointment made in violation of statutory provisions is a nullity in law and remains void irrespective of the length of service rendered or any acquiescence by the authorities and such illegality cannot be cured by passage of time. He submitted that to the same effect is the decision of the Hon'ble Supreme Court in the case of ***Union of India vs. Kartick Chandra Mondal*** reported in ***(2010) 2 SCC 422***.

23. Learned advocate submitted that since the Recruitment Rules of the respondent-school are not in consonance with the relevant Recruitment Rules notified by the Directorate of Education, a candidate selected following the school's Recruitment Rules cannot be approved. Such Recruitment Rules will be *void ab initio*. The respondent authorities were justified and indeed, obliged to withhold approval of appointment of the writ petitioner.

24. Learned counsel finally submitted that the plea of discrimination is legally untenable. Approval may have

been granted for appointment of candidates to other Post Graduate Teachers in the same school where recruitment was done following the rules of the school. However, Article 14 cannot be invoked to claim negative equality or parity with any alleged irregular or illegal appointment. Each recruitment proposal must stand on its own statutory compliance and equality cannot be claimed in illegality.

COURT'S VIEW:

25. The short and essential question that arises for consideration is, to what extent the Government can interfere with the internal administration of a minority educational institution, even if the Government grants aid to such an institution.

26. Article 30(1) of the Constitution provides that all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. Sub-Article (2) provides that the State shall, in granting aid to educational institutions, not discriminate against any educational institution on the

ground that it is under the management of a minority, whether based on religion or language.

27. The nature and extent of the constitutional right guaranteed to the minorities by Article 30 have been discussed in several decisions of the Hon'ble Supreme Court. Essentially, the right to organize their internal affairs and controlling other aspects of administration including recruitment of staff, teaching and non-teaching, **is absolute subject only to Government's right to prescribe minimum qualification** for teachers to be appointed by such minority institutions. That is desirable and since unless the teachers have a minimum standard, the institution will not be able to achieve educational excellence. After all, educational institutions are meant for grooming children and young persons who are the future of the country. Hence, the groomers must possess minimum qualification. Apart from this, any other form of interference by the State in the management of the affairs of a minority educational institution would amount to infringement of its fundamental right under Article 30 of the Constitution.

28. In this connection, the following decisions of the Hon'ble Supreme Court may be noted.

29. In **S.K. Mohd Rafique vs. Managing Committee, Contai Rahamania High Madrasah and others** reported at **(2020) 6 SCC 689**, in paragraph 53 of the judgment, the Hon'ble Supreme Court observed as follows:-

“53. At the cost of repetition, it needs to be clarified that if the minority institution has a better candidate available than the one nominated under a regulatory regime, the institution would certainly be within its rights to reject the nomination made by the authorities but if the person nominated for imparting education is otherwise better qualified and suitable, any rejection of such nomination by the minority institution would never help such institution in achieving excellence and as such, any such rejection would not be within the true scope of the right protected under Article 30(1) of the Constitution.”

30. In **Sindhi Education Society and another vs. Chief Secretary, Government of NCT of Delhi and others** reported at **(2010) 8 SCC 49**, the Hon'ble Supreme Court observed that the State cannot be permitted to impinge upon or violate directly or indirectly the constitutional rights and protection granted to various classes including the minorities. Thus, the State will not be within its constitutional duty to compel a linguistic minority institution to accept a policy decision, enforcement of which

will infringe its fundamental right and/or protection. The service in an aided minority school cannot be construed as “a service under the State” even with the aid of Article 12 of the Constitution of India. The Hon’ble Supreme Court went on to hold that certain Rules framed by the government under the Delhi School Education Act, 1973 cannot be enforced against a minority school.

31. In the instant case, it would appear that the educational qualification/eligibility criteria specified by the respondent-school in its vacancy notice are higher and more stringent than those prescribed by the Recruitment Rules published by the Directorate of Education for the same post. In my opinion, this is perfectly permissible. Nothing would prevent a minority institution from prescribing eligibility qualification for its teachers which are higher than those prescribed by the Government. This would only enhance the standard of the institution and the quality of education rendered there. The only restriction on the respondent-school is that it cannot specify eligibility

qualifications which are less than those specified by the government. That is not the case here.

32. Therefore, I see no justifiable reason for the respondent no.2 to withhold approval for the appointment of the writ petitioner in the vacant post of Post Graduate Teacher (Biology), in the respondent-school. It is not the requirement of law that the Recruitment Rules of a minority institution must be identical with or absolutely similar to the rules prescribed by the government. This is a misconception of the respondent no.2. All that a minority institution is required to ensure is that the qualifications prescribed by the institution for a candidate to be appointed to a particular post are not inferior to those prescribed by the government.

33. On the other point of discrimination urged by the writ petitioner, the respondent no.2 contends that there cannot be negative equality. No equal treatment can be claimed in illegality. This is a funny stand that the official respondent has taken. It suggests that it has illegally approved the appointment of teachers in the same school in other Post

Graduate Teacher posts following the same rules of the school which may be slightly at variance with the government rules. I need not go into that issue.

34. Insofar as the issue of demo-class is concerned, the respondent no.2 has taken a stand that the government has done away with interviews for recruitment to certain classes of posts. According to the respondent no.2, demo class is also a form of interview. Hence, the Recruitment Rules of the school are at variance with the government Recruitment Rules on that score also.

35. I see no merit in the aforesaid stand of the respondent no.2. A demo class may will be a kind of interview. However, just because the government has abolished interview in connection with the recruitment process for certain kind of posts, that does not mean that the respondent-minority school is also bound to follow that course. A minority institution is free to decide on the procedure or mechanism of recruitment as it deems fit and in the best interest of the institution. The government cannot dictate a minority institution in the matter of the

procedure for recruitment that it must follow. So long as the procedure followed is fair and rational, the government cannot have any further say. I repeat, the only obligation of a minority institution is to stipulate eligibility qualification for candidates who aspire to be appointed as teachers in such institution, which is not less than the eligibility qualification prescribed by the corresponding Recruitment Rules framed by the government.

36. Government office memoranda or government circulars or government instructions in any other form are not binding on minority institutions like the respondent-school. The appointees in a minority institution do not become servants of the government. Just because a minority institution receives government aid, may be in substantial sum, that *per se* would not make the institution a State within the meaning of Article 12 of the Constitution or a wing of the government.

37. In fact, as would appear from Article 30(2) of the Constitution of India, it is the constitutional duty of the government not to discriminate against a minority

institution in the matter of grant of aid just because the minority institution enjoys autonomy of management and is free from government control or intervention insofar as its day to day administration is concerned.

38. In view of the aforesaid, this writ petition succeeds. The impugned communication dated September 16, 2025, is set aside.

39. The respondent no.2 is directed to approve the appointment of the writ petitioner in the vacant post of Post Graduate Teacher (Biology) in the respondent-school since there is no dispute that the writ petitioner has requisite minimum qualification and has been recommended by the selection committee of the school for appointment. Such approval will be accorded within a fortnight from the date of communication of this order by the writ petitioner to the respondent no.2.

40. **WPA/554/2025** is accordingly disposed of. There will be no order as to costs.

41. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of usual formalities

(Arijit Banerjee, J.)