

and not on the defence taken by the adversary party. For example, if the plaintiff goes to court alleging that the defendant is a trespasser, the ordinary court will have jurisdiction and its jurisdiction will not be taken away merely because the defendant pleads tenancy. If, however, the defendant succeeds in proving that he is a tenant in respect of premises, possession whereof is sought, the court trying the case would dismiss the suit on the ground that the plaintiff had failed to prove the jurisdictional fact that the defendant was a trespasser. Here also the claim was lodged by the society in the Co-operative Court on the ground that the appellant was in wrongful occupation of the flat in question and was a mere trespasser. On facts it is now found that the appellant was and is a protected tenant under Section 15-A of the Rent Act. The proceedings initiated under Section 91(1) of the Societies Act cannot, in the circumstances, succeed for the simple reason that the society has failed to prove the fact which constitutes the foundation for jurisdiction. If the society fails to prove that the appellant has no right to the occupation of the flat since he is a mere trespasser, the suit must obviously fail. That is why even in the case of *Hindustan Petroleum Corporation Limited*² this Court did not consider it necessary to deal with the contention based on Section 91(1) of the Societies Act in detail and felt content by observing that the point stood covered by the decision in *Bhatnagar case*¹.

25. For the reasons aforesaid, we are of the view that the impugned judgment of the Bombay High Court cannot be allowed to stand. We allow this appeal, set aside the judgments of all the courts below and direct that the claim application filed under Section 91(1) of the Societies Act shall stand dismissed. However, in the facts and circumstances of the case we make no order as to costs.

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(BEFORE K.N. SINGH, T.K. THOMMEN AND N.M. KASLIWAL, JJ.)

VIRENDRA NATH GUPTA AND ANOTHER .. Appellants;

Versus

DELHI ADMINISTRATION AND OTHERS .. Respondents.

Civil Appeal No. 3678 of 1984[†], decided on March 2, 1990

Service Law — Appointment — Qualification — Linguistic minority educational institution aided and recognised by Government — Appointment of Vice-Principal — Held, management entitled to introduce knowledge of the minority language (Malayalam) as an additional essential qualification apart from the qualification prescribed by the relevant Rules, especially when that language made a compulsory subject for students up to V standard in the institution — Rules published on April 8, 1980 made under Section 8(1) of Delhi School Education Act, 1973 read with Rule 100 of Delhi School Education Rules, 1973 — Administrative Law — Natural justice — Mala fides

† From the Judgment and Order dated January 5, 1982 of the Delhi High Court in Civil Writ Petition No. 2923 of 1981

Constitution of India — Articles 29 and 30 — Linguistic minority institution has right under, to conserve and promote its language, script and culture — This right cannot be taken away by any legislative enactment or rules made by executive authorities

The Kerala Education Society is a recognised and aided institution. It is subject to the regulatory provisions contained in the Delhi School Education Act, 1973 and the Rules made thereunder. The institution is a linguistic minority institution. Its object is to promote the study of Malayalam and to promote and preserve Malayalee dance, culture and art. Malayalam is compulsory for students up to V standard and it is one of the optional subjects from VI to XII standard. The question was whether the management of the institution could validly prescribe knowledge of Malayalam as an essential qualification for the post of Vice-Principal, in addition to the essential qualifications prescribed by the Rules published on April 7, 1980 framed under Section 8(1) of the Act read with Rule 100 of the Delhi Education Rules, 1973.

Held:

When Malayalam was compulsory subject for the students up to V standard and optional subject for students from VI to XII standard, it is not only proper but desirable that the incumbent holding the office of Principal or Vice-Principal being administrative in nature should have knowledge of speaking and writing Malayalam. The management acted within its constitutional right in insisting on the knowledge of Malayalam as an essential qualification for the post of Vice-Principal. In this case the Education Department of Delhi Administration did not raise any objection to the management's action; on the other hand, the Selection Committee constituted by the Director of Education made its recommendation on the basis of the qualifications prescribed in the advertisement and the Director of Education approved the appointment of respondent 5. In this view there is no merit in the appellants' submission that the knowledge of Malayalam was prescribed mala fide with a view to oust them from consideration. (Para 8)

A linguistic minority has not only the right to establish and administer educational institution of its choice, but in addition to that it has further constitutional right to conserve its language, script and culture. In exercising this right a linguistic minority may take steps for the purpose of promoting its language, script or culture and in that process it may prescribe additional qualification for teachers employed in its institution. The rights conferred on linguistic minority under Articles 29 and 30 cannot be taken away by any law made by the legislature or by rule made by executive authorities. An institution set up by the religious or linguistic minority is free to manage its affairs without any interference by the State but it must maintain educational standards so that the students coming out of that institution do not suffer in their career. If the recognised minority institution is recipient of government aid, it is subject to the regulatory provisions made by the State. It is permissible to the State to prescribe syllabus, curriculum of study and to regulate the appointment and terms and conditions of teachers with a view to maintain a minimum standard of efficiency in the educational institutions. But these regulatory provisions cannot destroy the basic right of minority institutions as embodied under Articles 29 and 30. (Para 7)

In re the Kerala Education Bill, 1957, AIR 1958 SC 956: 1959 SCR 995; *Ahmedabad St. Xaviers College Society v. State of Gujarat*, (1974) 1 SCC 717: (1975) 1 SCR 173; *Lilly*

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Kurian v. Sr. Lewina, (1979) 2 SCC 124; 1979 SCC (L&S) 134; (1979) 1 SCR 820; *Frank Anthony Public School Employees' Association v. Union of India*, (1986) 4 SCC 707; (1987) 2 ATC 35; *Y. Theclamma v. Union of India*, (1987) 2 SCC 516; *All Bihar Christian Schools Association v. State of Bihar*, (1988) 1 SCC 206, *relied on*

Service Law — Appointment — Qualification — Relaxation — Mala fides — Vice-Principal of an aided and recognised minority educational institution — Relaxation in essential qualification granted under Rules by Selection Committee as well as competent authority in favour of a teacher (respondent 5) who belonged to the same institution and who was otherwise eligible — Selection made in accordance with the Rules — Selection Committee consisting of five members out of which three representatives of Educational Department appointed by Director of Education — Plea that management, being interested in that candidate, manipulated to get his selection made, held, unfounded — Rules published on April 7, 1980 framed under Section 8(1) of Delhi School Education Act, 1973 read with Rule 100 of Delhi School Education Rules, 1973 — Administrative Law — Natural justice — Mala fides (Para 6)

Appeal dismissed

R-M/9939/CLA

Advocates who appeared in this case:

R.B. Datar, Senior Advocate (S. Wasim Qadi, Advocate, with him) for the Appellants;
V.C. Mahajan, K.K. Venugopal, G. Viswanatha Iyer, Senior Advocates (R.B. Mishra, Ms A. Subhashini, Ms Baby Krishnan, C.S. Vaidyanathan, K.V. Mohan, Dilip Pillai, P. Kesava Pillai and N. Sudhakaran, Advocates, with them) for the Respondents.

The Judgment of the Court was delivered by

SINGH, J.— The two appellants, S/Sh. Virendra Nath Gupta and Mohammad Aslam Kidwai are teachers in the Kerala Education Society Senior Secondary School, New Delhi. They challenged the appointment of T.N. Vishwanathan Nair, respondent 5 as Vice-Principal of the Institution by means of a writ petition before the Delhi High Court under Article 226 of the Constitution of India. The High Court by its order dated January 5, 1982 dismissed the petition in limine. Hence this appeal by special leave.

2. The Kerala Education Society (hereinafter referred to as 'the Society') is a Society registered under the Societies Registration Act, 21 of 1960. The Society is running the Kerala Education Society Senior Secondary School in New Delhi. The Delhi Administration as well as the Education Authorities have recognised the institution as a linguistic minority school. The institution is aided and recognised by the Delhi Administration. The objects of the Society are: (i) to provide facility for the education of children in the Union territory of Delhi by making provision for suitable institutions; (ii) to promote the study of Malayalam. A sizeable number of persons belonging to State of Kerala who speak Malayalam are residents in Delhi and they constitute a linguistic minority. The Malayalees have their own language, script and culture, and in order to preserve the same they established the institution which is administered by the linguistic minority, with the primary purpose of promoting the study of Malayalam and also for preserving their culture, dance, music and other Kerala arts. Teaching of Malayalam in the

aforesaid institution is compulsory from classes I to V, as the medium of instruction is Malayalam. However, Malayalam is an optional subject in VI to XII standard. The school has 1700 students and more than 60 per cent of parents and guardians belong to the lower income group of Malayalam speaking community.

3. The institution is regulated by the provisions of the Delhi School Education Act, 1973 (hereinafter referred to as 'the Act') and the Rules framed thereunder, namely, Delhi School Education Rules, 1973 (hereinafter referred to as 'the Rules'). One post of Vice-Principal was created in the institution in the pay scale of Rs 650-1200 with effect from October 1, 1980. In March 1981 a Departmental Promotion Committee (hereinafter referred to as 'DPC') was constituted to make selection for appointment to the post of Vice-Principal in accordance with the recruitment rules made under Section 8(1) of the Act read with Rule 100 of the Rules issued on February 25, 1980 and published in the Delhi Gazette Extraordinary dated April 7, 1980. The DPC made selection from amongst the teachers of the institution to fill up the post of Vice-Principal by promotion in accordance with the aforesaid Rules. The DPC recommended the name of T.N. Vishwanathan Nair, respondent 5 for promotion to the post of Vice-Principal although he did not fall within the zone of consideration as he was junior to the appellants at Sl. No. 10 in the seniority list. The management of the institution accepted the recommendation of the DPC and forwarded papers to the Director of Education for approval. Meanwhile, the appellants made representation to the Director of Education against the selection and appointment of respondent 5. The Director of Education rejected the management's proposal and refused to approve the selection and appointment of respondent 5 on the ground that he did not fall within the zone of consideration according to the Rules and further he did not possess the essential qualification of five years' experience as Post Graduate Teacher as required by the Recruitment Rules. Since no suitable candidate was available for promotion within the zone of consideration the Director of Education permitted the Managing Committee to advertise the post for filling the same by direct recruitment. Thereafter, advertisement was published on September 24, 1981 inviting applications for the post of Vice-Principal. The advertisement stated the essential qualifications being Master's Degree with second division, five years' teaching experience as Post Graduate Teacher or ten years' teaching experience as Trained Graduate Teacher, and also ability to speak and write Malayalam. Since the knowledge of Malayalam was prescribed as an essential qualification, the appellants were not eligible for selection or appointment as they could not speak or write Malayalam. On the recommendation of the Selection Committee respondent 5 was appointed as a direct recruit to the post of Vice-Principal and the Director of Education approved his appointment.

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4. Learned counsel for the appellants assailed the validity of the appointment of respondent 5 on three grounds: (i) since under the Rules post of Vice-Principal was a promotional post, no direct recruitment was permissible; (ii) respondent 5 did not possess the essential qualification of Master's Degree in second division; (iii) the management mala fide introduced knowledge of Malayalam as an essential qualification with a view to favour respondent 5 and to oust the appellants even though the Rules did not permit knowledge of Malayalam as an essential qualification. We will deal with these submissions in seriatim.

5. There is no dispute that the recruitment/appointment to the post of Vice-Principal in the government aided schools and recognised schools in the Union territory of Delhi is regulated by the Rules published on April 7, 1980, a copy of which has been placed before us, framed under Section 8(1) of the Act read with Rule 100. Since the institution is an aided and recognised school the aforesaid Rules were applicable for the purpose of recruitment to the post of Vice-Principal. According to the Rules recruitment to the post of Vice-Principal is to be made by selection. The Rules prescribe educational and other qualifications. The Rules provide that the post of Vice-Principal should be filled by promotion failing which by direct recruitment as stated in column 8 of Annexure B to the Rules. As noticed earlier the management made attempt to fill the post by promotion and the DPC had considered the case of teachers of the institution for promotion to the post of Vice-Principal and it recommended respondent 5, but the same was not approved by the Director of Education. The Selection Committee, had considered the appellants also but it did not find them suitable for promotion, instead it recommended respondent 5 for promotion but the recommendation of the Selection Committee was not approved by the Director of Education. The Director of Education by his letter dated May 2, 1981 directed the management of the institution to fill the post by direct recruitment. Pursuant to that direction the management issued advertisement for making the recruitment. The Rules thus contain express provision for direct recruitment to the post of Vice-Principal and as such we find no merit in the submission made on behalf of the appellants.

6. Admittedly, respondent 5 did not possess Master's Degree in second division, which was an essential qualification but column 5 to Annexure B to the Rules which prescribes essential qualifications, states: "Condition of second division relaxable in case of candidates belonging to the same school and also in case of Scheduled Castes/Scheduled Tribes." The Rules further contain a note: "Competent authority may relax the essential qualifications in exceptional cases of the candidates of the same school, after recording reasons therefor". The Selection Committee as well as the competent authority granted relaxation to respondent 5 as he belonged to the same school. Further he had ten years'

experience as Trained Graduate Teacher and as such he was eligible for direct recruitment under the Rules. The appellants' plea that since the management was interested in appointing respondent 5 to the post of Vice-Principal, it manipulated to get his selection made for appointment to the said post, is without any foundation. The Selection Committee consisted five members out of which three were representatives of the Education Department appointed by the Director of Education. The Selection Committee made the selection in accordance with the Rules and found respondent 5 suitable for appointment to the said post. In this view there is no merit in the second submission made on behalf of the appellants.

7. The third submission made on behalf of the appellants is that the additional essential qualification regarding knowledge of Malayalam was prescribed in contravention of the Rules and this was done with a view to oust the appellants who were the senior teachers fully equipped with other essential qualifications for appointment to the post of Vice-Principal. While considering this question we cannot overlook the fact that the institution is a linguistic minority institution, its object is to promote the study of Malayalam and to promote and preserve Malayalee dance, culture and art. Article 29 of the Constitution of India guarantees right of linguistic minorities having a distinct language, script and culture of their own and, it also protects their right to conserve the same. Article 30 of the Constitution guarantees the right of minorities whether based on religion or language to establish and administer educational institutions of their choice. A linguistic minority has not only the right to establish and administer educational institution of its choice, but in addition to that it has further constitutional right to conserve its language, script and culture. In exercising this right a linguistic minority may take steps for the purpose of promoting its language, script or culture and in that process it may prescribe additional qualification for teachers employed in its institution. The rights conferred on linguistic minority under Articles 29 and 30 cannot be taken away by any law made by the legislature or by rule made by executive authorities. However, the management of a minority institution has no right to maladminister the institution, and it is permissible to the State to prescribe syllabus, curriculum of study and to regulate the appointment and terms and conditions of teachers with a view to maintain a minimum standard of efficiency in the educational institutions. This is the consistent view of this Court, as held in a number of decisions where the scope and extent of minority's right to manage its institutions were considered. See *In re the Kerala Education Bill, 1957*¹; *Ahmedabad St. Xaviers College Society v. State of Gujarat*²; *Lilly Kurian v. Sr. Lewina*³; *Frank Anthony Public School Employees' Association v.*

1 1959 SCR 995: AIR 1958 SC 956

2 (1974) 1 SCC 717: (1975) 1 SCR 173

3 (1979) 2 SCC 124: 1979 SCC (L&S) 134: (1979) 1 SCR 820

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*Union of India*⁴; *Y. Theclamma v. Union of India*⁵; *All Bihar Christian Schools Association v. State of Bihar*⁶. Though minority's right under Articles 29 and 30 is subject to the regulatory power of the State, but regulatory power cannot be exercised to impair the minority's right to conserve its language, script or culture while administering the educational institutions. An institution set up by the religious or linguistic minority is free to manage its affairs without any interference by the State but it must maintain educational standards so that the students coming out of that institution do not suffer in their career. But if the recognised minority institution is recipient of government aid, it is subject to the regulatory provisions made by the State. But these regulatory provisions cannot destroy the basic right of minority institutions as embodied under Articles 29 and 30.

8. The Kerala Education Society is a recognised and aided institution, it is subject to the regulatory provisions contained in the Delhi School Education Act 1973 and the Rules made thereunder. The question is whether the management of the institution could validly prescribe knowledge of Malayalam as an essential qualification for the post of Vice-Principal. Admittedly, the institution is for promotion of Malayalam language and as Malayalam is compulsory for students up to V standard and it is one of the optional subjects from VI to XII standard, it is not only proper but desirable that the incumbent holding the office of Principal or Vice-Principal being administrative in nature should have knowledge of speaking and writing Malayalam. The requirement of knowledge of Malayalam is closely connected with the right of the linguistic minority to subserve (*sic* conserve) its script, language and culture. The management of the institution acted within its right in prescribing an additional essential qualification regarding knowledge of Malayalam and no exception can be taken to the same as it is the constitutional right of the linguistic minority to insist on the knowledge of the language, on the basis of which the linguistic minority is recognised. The provisions of the Act and the Rules are subject to the guarantees of constitutional rights of the minorities' institutions. In our opinion, the management acted within its constitutional right in insisting on the knowledge of Malayalam as an essential qualification for the post of Vice-Principal. The Education Department of Delhi Administration did not raise any objection to the management's action; on the other hand, the Selection Committee constituted by the Director of Education made its recommendation on the basis of the qualifications prescribed in the advertisement and the Director of Education approved the appointment of respondent 5. In this view we find no merit in the appellants' submission that the knowledge of Malayalam was prescribed mala fide with a view to oust them from consideration.

4 (1986) 4 SCC 707; (1987) 2 ATC 35

5 (1987) 2 SCC 516

6 (1988) 1 SCC 206

9. In view of the above discussion we find no legal infirmity in the appointment of respondent 5 as Vice-Principal. It appears that during the pendency of the appeal a vacancy arose in the post of Principal to which respondent 5 was promoted. Consequently there was a vacancy in the post of Vice-Principal to which K.D. Antony, another teacher of the school was appointed. The appellants filed an application for impleading K.D. Antony to the appeal but no relief was claimed against him. The application for impleading K.D. Antony is accordingly rejected.

10. The appeal fails and it is accordingly dismissed. There will be no order as to costs.

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(BEFORE RANGANATH MISRA, M.M. PUNCHHI AND K.J. REDDY, JJ.)

BHARAT ELECTRONICS LIMITED .. Appellant;

Versus

INDUSTRIAL TRIBUNAL, KARNATAKA,
BANGALORE AND ANOTHER .. Respondents.

Civil Appeal No. 744 of 1987[†], decided on March 15, 1990

Labour Law — Industrial Disputes Act, 1947 — Sections 33(2)(b) proviso and 2(rr) — Payment of ‘wages for one month’ as condition under proviso to Section 33(2)(b) for dismissal of a workman — Period of one month for payment of the wages to be computed from the date of filing the approval application under Section 33(2)(b) — Wages for this period of one month, when the workman remained unemployed, will not include any amount payable to the workman on the basis of his actual working — Hence night shift allowance, being variable in nature depending on actual performance of work, held, not includible in the wages for the one month to be paid to the workman — Allowances

Labour Law — Industrial Disputes Act, 1947 — Section 33(2)(b) proviso — Payment of wages for one month — Burden on management to establish that the payment made to the workman represented full wages of one month following the date of discharge or dismissal

Labour Law — Industrial Disputes Act, 1947 — Section 2(rr)(i) — Inclusive definition under, is subject to modification in the context of repugnancy, if any

Held :

The proviso to Section 33(2)(b) requiring the management to pay wages for one month is intended “to soften the rigour of unemployment that will face the workman against whom an order of discharge or dismissal has been passed”. Therefore, one month’s wages as thought and provided to be given are conceptually for the month to follow, the month of unemployment and in the context wages for the month following the date of dismissal and not a repetitive wage of the month previous to the date of dismissal. The date of dismissal

† From the Judgment and Order dated October 9, 1986 of the Industrial Tribunal, Karnataka in Serial No. 1/80 in I.D. No. 26/79