

A.F.R.**Reserved on 27.01.2020 (Court No.34)****Delivered on 22.04.2020 (In Chamber)****In Chamber****1. Case :-** WRIT - A No. - 9650 of 2018**Petitioner :-** C/M National Inter College and another**Respondent :-** State Of U.P. And 2 Others**Counsel for Petitioner :-** Radha Kant Ojha,(Sr. Advocate), Shivendu Ojha,**Counsel for Respondent :-** C.S.C.**Connected with****2. Case :-** WRIT - A No. - 14320 of 2018**Petitioner :-** C/M Methodist Girls Inter College Civil Lines And Another**Respondent :-** State Of U.P. And 4 Others**Counsel for Petitioner :-** Sri Ashok Khare (Sr. Advocate), J.P. Singh,**Counsel for Respondent :-** C.S.C.**3. Case :-** WRIT - A No. - 15142 of 2018**Petitioner :-** C/M Jain Kanya Uchchatar Madhyamik Vidyalay**Respondent :-** State Of U.P. And 5 Others**Counsel for Petitioner :-** Ravi Kiran Jain (Senior Advocate), Akank
Kumar Jain**Counsel for Respondent :-** C.S.C.**4. Case :-** WRIT - A No. - 15146 of 2018**Petitioner :-** C/M Jain Inter College**Respondent :-** State Of U.P. And 5 Others**Counsel for Petitioner :-** Ashok Khare (Senior Advocate), Akank
Kumar Jain,**Counsel for Respondent :-** C.S.C.**5. Case :-** WRIT - A No. - 15330 of 2018**Petitioner :-** C/M Khalsa Inter College and another**Respondent :-** State Of U.P. And 5 Others**Counsel for Petitioner :-** Anurag Shukla**Counsel for Respondent :-** C.S.C.**6. Case :-** WRIT - A No. - 15794 of 2018**Petitioner :-** C/M Muslim Inter College and another**Respondent :-** State Of U P And 3 Others**Counsel for Petitioner :-** Kshitij Shailendra**Counsel for Respondent :-** C.S.C.**7. Case :-** WRIT - A No. - 17434 of 2018**Petitioner :-** C/M St. Judes Inter College

Respondent :- State Of U.P. And 3 Others
Counsel for Petitioner :- Rajesh Gupta, Subhash Ghosh
Counsel for Respondent :- C.S.C.

8. Case :- WRIT - A No. - 18488 of 2018
Petitioner :- C/M Acharya Nami Sagar Jain Inter College and another
Respondent :- State Of U.P. And 4 Others
Counsel for Petitioner :- Sri Ashok Khare, (Senior Advocate), Satya Prakash Singh, Bajrang Bahadur Singh,
Counsel for Respondent :- C.S.C.

9. Case :- WRIT - A No. - 21083 of 2018
Petitioner :- C/M Sri Shanti Sagar Digambar Jain Kanya Inter College
Respondent :- State Of U.P. And 04 Others
Counsel for Petitioner :- Rahul Jain
Counsel for Respondent :- C.S.C.

10. Case :- WRIT - A No. - 21592 of 2018
Petitioner :- C/M Jain Sthanakwasi Girls Inter College
Respondent :- State Of U.P. And 4 Others
Counsel for Petitioner :- Rahul Jain
Counsel for Respondent :- C.S.C.

11. Case :- WRIT - A No. - 21900 of 2018
Petitioner :- C/M Talimuddin Higher Secondary School and another
Respondent :- State Of U.P. And 4 Others
Counsel for Petitioner :- Jamil Ahamad Azmi
Counsel for Respondent :- C.S.C.

12. Case :- WRIT - A No. - 25524 of 2018
Petitioner :- C/M Canossa Convent Girls Inter College and another
Respondent :- State Of U P And 4 Others
Counsel for Petitioner :- Rajesh Gupta
Counsel for Respondent :- C.S.C.

13. Case :- WRIT - A No. - 26001 of 2018
Petitioner :- C/M Swami Atmdev Gopalanand Inter College, Farrukhabad, and another
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Nand Lal Pandey, Suyash Pandey
Counsel for Respondent :- C.S.C.

14. Case :- WRIT - A No. - 26442 of 2018
Petitioner :- C/M Shri Kund Kund Jain Inter College
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Ram Lal Mishra
Counsel for Respondent :- C.S.C.

15. Case :- WRIT - A No. - 3708 of 2019

Petitioner :- C/M Sajida Girls Inter College and another

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Nand Lal Pandey, Arun Kumar Misra, Suyash Pandey

Counsel for Respondent :- C.S.C.

16. Case :- WRIT - A No. - 5286 of 2019

Petitioner :- C/M A.L. Nomani Inter College and another

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Jamil Ahamad Azmi, Syed Khursheed Anwar Alvi

Counsel for Respondent :- C.S.C.

17. Case :- WRIT - A No. - 5289 of 2019

Petitioner :- C/M Mohammad Ali Purva Madhyamik Vidyalaya and another

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Jamil Ahamad Azmi, Syed Khursheed Anwar Alvi

Counsel for Respondent :- C.S.C.

18. Case :- WRIT - A No. - 5291 of 2019

Petitioner :- C/M R.A. Qidwai Balika Inter College and 2 others

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Jamil Ahamad Azmi, Syed Khursheed Anwar Alvi

Counsel for Respondent :- C.S.C.

19. Case :- WRIT - A No. - 5292 of 2019

Petitioner :- C/M Kidwai Memorial Girls Inter College

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Shailendra (Sr. Advocate), S.M. Iqbal Hasan,

Counsel for Respondent :- C.S.C.

20. Case :- WRIT - A No. - 5295 of 2019

Petitioner :- C/M M.D. Jain Uchattar Madhyamik Vidyalaya and another

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Sri Ashok Khare (Sr. Advocate), Siddharth Khare, Indra Deo Mishra, Shri Ram (Rawat),

Counsel for Respondent :- C.S.C.

21. Case :- WRIT - A No. - 5297 of 2019

Petitioner :- C/M Anglo Bengali Girls Inter College and another

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Samarath Singh, Hritudhwaj Pratap

Sahi, Sankalp Narain

Counsel for Respondent :- C.S.C.

22. **Case :-** WRIT - A No. - 5299 of 2019

Petitioner :- C/M Okm Inter College Lar and 2 Others

Respondent :- State Of U P And 4 Others

Counsel for Petitioner :- Tej Narain Tiwari

Counsel for Respondent :- C.S.C.

23. **Case :-** WRIT - A No. - 5300 of 2019

Petitioner :- C/M Public Balika Inter College and another

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Jamil Ahamad Azmi, Syed Khursheed Anwar Alvi

Counsel for Respondent :- C.S.C.

24. **Case :-** WRIT - A No. - 5315 of 2019

Petitioner :- C/M Hafiz Mohammad Siddique Islamia Inter College and another

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Syed Khursheed Anwar Alvi

Counsel for Respondent :- C.S.C.

25. **Case :-** WRIT - A No. - 5316 of 2019

Petitioner :- C/M St. Marys Inter College and another

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Rajesh Gupta, Subhash Ghosh

Counsel for Respondent :- C.S.C.

26. **Case :-** WRIT - A No. - 5317 of 2019

Petitioner :- C/M. St. Francis High School

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Rajesh Gupta, Subhash Ghosh

Counsel for Respondent :- C.S.C.

27. **Case :-** WRIT - A No. - 5320 of 2019

Petitioner :- C/M Of Chaman Lal Digamber Jain Kanya Inter College Rampur and 9 Others

Respondent :- State Of U P And 4 Others

Counsel for Petitioner :- Arvind Srivastava III

Counsel for Respondent :- C.S.C.

28. **Case :-** WRIT - A No. - 5321 of 2019

Petitioner :- C/M. Josephs Inter College and 2 others

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Rajesh Gupta, Subhash Ghosh

Counsel for Respondent :- C.S.C.

29. Case :- WRIT - A No. - 6148 of 2019

Petitioner :- C/M Falah E Darain Punjabi Inter College

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Shailesh Pandey

Counsel for Respondent :- C.S.C.

30. Case :- WRIT - A No. - 8488 of 2019

Petitioner :- C/M Mubarakpur Inter College and another

Respondent :- State Of U P And 4 Others

Counsel for Petitioner :- Jamil Ahamad Azmi

Counsel for Respondent :- C.S.C.

31. Case :- WRIT - A No. - 13770 of 2019

Petitioner :- C/M Nazibuddaula Girls Inter College Najibabad Bijnor

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Manish Kumar Pandey

Counsel for Respondent :- C.S.C.

32. Case :- WRIT - C No. - 20775 of 2018

Petitioner :- C/M Swami Leela Shah Adarsh Sindhi Inter College And Another

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Siddharth Khare, Ashok Khare (Senior Advocate)

Counsel for Respondent :- C.S.C.

Hon'ble Sudhir Agarwal, J.

Hon'ble Rajeev Misra, J.

(Delivered by Hon'ble Sudhir Agarwal, J.)

1. Heard Sri Radha Kant Ojha, Senior Advocate, assisted by Sri Shivendu Ojha, Advocate, Sri Ashok Khare, Senior Advocate, assisted by Sri Aklank Kumar Jain, Sri Anurag Shukla, Advocate, Sri Jamil Ahmad Azmi, Advocate, Sri Syed Khursheed Anwar Alvi, Advocate, Sri Shailendra, Senior Advocate, assisted by Sri S.M. Iqbal Hasan, Advocate, for petitioners, and Sri Manish Goel, Additional Advocate General assisted by Sri Subhash Rathi, Additional Chief Standing Counsel for respondents.

2. In all these 32 writ petitions, mainly filed by Committees of Management of various Secondary Educational Institutions, common questions of law and facts have been raised. Broadly, challenge is to amendment made in Regulation-17, Chapter-II of Regulations framed

under U.P. Intermediate Education Act, 1921 (hereinafter referred to as 'Act, 1921'), notified vide Notification dated 20.03.2018 published in Official Gazette dated 24.03.2018. The petitioners have also challenged Government Order dated 12.03.2018. Since relief prayed in all these writ petitions are broadly similar, the same have been heard together and are being decided by this common judgment.

3. Learned counsel for parties have agreed to treat Writ Petition (Writ– A) No. 9650 of 2018 as a leading writ petition and referred to the pleadings thereof while addressing this Court.

4. The relevant facts disclosed in the leading Writ Petition (Writ– A) No. 9650 of 2018 (hereinafter referred to as 'WP-1'), in brief, may be described as under.

5. WP-1 has been filed by Committee of Management, National Inter College, Shikarpur, Bulandshahr, stating that National Inter College, Shikarpur, Bulandshahr (hereinafter referred to as 'NIC Shikarpur'), is a minority Secondary Educational Institution, recognized by Board of High School and Intermediate Education, U.P. (hereinafter referred to as “U.P. Board”) and governed by the provisions of Act, 1921. It is imparting education upto Intermediate but aided upto High School level only. For the purpose of payment of salary to teaching and non teaching staff, upto High School, it is governed by the provisions of U.P. High Schools and Intermediate Colleges (Payment of Salaries to the Teachers and other Employees) Act, 1971 (hereinafter referred to as “Act, 1971”). It is stated that for selection of teaching staff including Principal, procedure has been provided under Section 16-E and 16-F of Act, 1921. Section 16-FF is an exception making provision for selection of teaching staff in Minority Educational Institutions and provides constitution of Selection Committee as also procedure for appointment. Regulations 10 to 17 provide procedure for appointment of Teachers and Principals in recognized Secondary Educational Institutions.

6. State Government issued an order dated 12.03.2018 stating that in

exercise of powers under Section 16(2) of Act, 1921, Governor has approved amendment in Regulation-17 Chapter-II of Regulations framed under Act, 1921. Under the amended provision, selection of teaching staff is now to be made by a Private Agency through Joint Director of Education (hereinafter referred to as “JDE”) or District Inspector of Schools (hereinafter referred to as “DIOS”) and five names for each vacancy shall be recommended to the College, who will conduct interview and thereafter appointment will be made. It is said that this interference in the right of appointment of teaching staff is violative of Section 16-FF of Act, 1921 read with Article 29 of Constitution of India.

7. Petitioners, have prayed that Government Order dated 12.3.2018 be declared ultra vires, insofar as it relates to Regulation 17(D), Chapter-II of Regulations framed under Act, 1921, of Article 29 of Constitution of India and also Section 16-FF of Act, 1921. A mandamus has also been prayed that respondents should not implement or give effect to Government Order dated 12.03.2018 to the extent Regulation 17(D) of Chapter-II has been amended by aforesaid Government Order.

8. Respondents have contested WP-1 by filing counter affidavit sworn by Sri Radha Krishna Tiwari, DIOS, Bulandshahr, stating that NIC, Shikarpur, District Bulandshahr is a non government recognized Secondary Educational Institution. It is aided by State Government upto High School. It is also admitted that it is a minority institution but governed by Act, 1921 and Act, 1971. Appointments of teachers and employees are made in accordance with the directions contained under Government Orders, issued from time to time. It is said that only Government Order dated 12.03.2018 has been challenged though subsequently it was further amended by Government vide Government Order issued on 20.03.2018 and published in Official Gazette on 24.03.2018 publishing amendments made in Regulation 17 of Act, 1921 by exercising powers under Section 16(2) of Act, 1921. It is said that aforesaid Notification has not been challenged, therefore, writ petition is

liable to be dismissed. Regulation 17, Chapter-II of Act, 1921, as has been amended, do not override authority of Management; it is not inconsistent to the rights conferred by Article 29 and 30 of Constitution of India; Managements still has right to select candidates and only for the betterment of Educational Institutions and having competent staff, procedure for screening has been provided by conducting written test through a private agency but it does not affect rights of Management in any manner; it is only for the purpose of making selection process transparent; no absolute power of selection has been given to Educational Authorities or a private agency but power of selection still vests in the Management and the procedure is only to regulate better quality of education and to maintain transparency in selection; there is no interference by State Government in the selection of candidates; amendment does not affect authority of Management, and, instead, procedure is to make the things convenient and transparent.

9. A Supplementary Counter Affidavit has also been filed on behalf of respondents stating that Regulation 17(1)(D), Chapter-II of Regulations has further been amended by Government Orders dated 06.11.2018, 18.04.2019 and 12.08.2019 and since these Government Orders are not challenged, therefore, relief as prayed for in WP-1 cannot be granted and it has rendered infructuous.

10. Necessity to amend Regulation 17(1)(D), Chapter-II of Regulations, arose in order to maintain transparency in the procedure relating to appointment of Teachers and Principals in the Government aided Institutions and to avoid any scope of bias and personal interest on the part of Management. Government received various complaints of favoritism, partiality and other illegalities in the matter of selection and appointment of Teachers in Government aided minority institutions and to remove such eventualities and to ensure appointment of more qualified Teachers and Principals, to make the process of selection free of whims of Management, Regulation-17 has been amended, which is only regulatory

in nature.

11. It is further stated that challenging Government Order dated 12.08.2019, Writ Petition No. 27342 (M/B) of 2019 has been filed at Lucknow Bench of this Court, which is pending and therein respondents have filed counter affidavit. It is said that all the writ petitions challenging Government order dated 12.03.2018, without challenging subsequent amendments, are not maintainable having rendered infructuous and deserves to be dismissed.

12. In all other writ petitions, this fact is not disputed that those Institutions are minority Institutions and basically challenge to the amendment made to Regulation 17 is founded on the similar grounds, therefore, we are not repeating the facts of those cases, but, for convenience, place on record, reliefs sought therein in the form of chart, as under :

Sl. No.	Writ Petitions.	Prayer
1	9650 of 2018 (C/M National Inter College, Shikarpur, Bulandshahr and another Vs. State of U.P. and others)	(a) An order or direction declaring the Government Order dated 12.3.2018 (Annexure-1 to the writ petition) issued by respondent no.1 so far as amendment in Regulation 17(D) of Chapter-II of the U.P. Intermediate Education Act as <i>ultra-vires</i> to the Articles 29 and 30 of the Constitution of India, as well as,also <i>ultra-vires</i> to the Section 16-FF of U.P. Intermediate Education Act, 1921. (b) An order or direction commanding respondents not to implement and give effect to the Government Order dated 12.3.2018 (Annexure-1 to the writ petition) issued by respondent no.1 so far as amendment in Regulation 17(D) of Chapter-II of the U.P. Intermediate Education Act,1921. (c) Order/direction in nature of mandamus commanding the respondents to permit the petitioner to make selection of staff as per rule prevailing prior to the amendment.
2	14320 of 2018 (C/M Methodist Girls Inter College Civil Lines and another Vs. State of U.P. and others)	(i) to issue a writ, order or direction of suitable nature holding impugned notification dated 20.3.2018 (published in official gazette on 24.3.2018)as <i>ultra vires</i> to the Constitution and U.P. Intermediate Education Act (copy of the impugned Notification dated 20.3.2018 is enclosed as Annexure No.8 to this petition). (ii) to issue writ of certiorari quashing the Government Order dated 12.3.2018 (copy enclosed

		<p>as Annexure No.5 to this petition).</p> <p>(iii) to issue a writ, order or direction in the nature of mandamus commanding the respondents to permit the petitioners to fill all vacant posts in their College in accordance with the un-amended provisions of Regulation 17 contained in Chapter-II of the U.P. Intermediate Education Act, 1921.</p> <p><u>Amended prayers</u></p> <p>(vi) to issue a writ, order or direction in the nature of mandamus declaring the amendment effected in Regulation 17(1)(g) contained in Chapter-II of the U.P. Intermediate Education Act, 1921 by Notification dated 20.3.2018 as published in the U.P. Gazette dated 24.3.2018 as <i>ultra vires</i> the Constitution and Section 16-FF of the U.P. Intermediate Education Act, 1921.</p> <p>(vii) to issue a writ, order or direction in the nature of certiorari quashing the impugned Government Order/Notification dated 12.3.2018 (copy of the impugned Government Order dated 12.8.2018 is enclosed as Annexure-1 to the amendment application).</p>
3	15142 of 2018 (C/M Jain Kanya Uchcharat Madhyamik Vidyalay Vs. State of U.P. and others)	<p>(i) Issue a suitable order or direction in the nature of mandamus declaring the notification dated 20.3.2018 as published in U.P. Gazette dated 24.3.2018 to be violative of Article 30(1) of Constitution and being <i>ultra vires</i>.</p> <p>(ii) Issue a suitable writ, order or direction in the nature of certiorari quashing the Government Order dated 12.3.2018 issued by the State Govt. (Annexure No.3).</p>
4	15146 of 2018 (C/M Jain Inter College Vs. State of U.P. and others)	<p>(i) Issue a suitable order or direction in the nature of mandamus declaring the notification dated 20.3.2018 as published in U.P. Gazette dated 24.3.2018 to be violative of Article 30(1) of Constitution and being <i>ultra vires</i>.</p> <p>(ii) Issue a suitable writ, order or direction in the nature of certiorari quashing the Government Order dated 12.3.2018 issued by the State Govt. (Annexure No.7).</p>
5	15330 of 2018 (C/M Khalsa Inter College and another Vs. State of U.P. and others)	<p>(i) a writ, order or direction in the nature of mandamus declaring the notification dated 20.3.2018, as published in U.P. Gazette dated 24.3.2018 (Annexure-5 to the writ petition) to be violative of Article 30(1) of Constitution and being <i>ultra vires</i>.</p> <p>(ii) a writ, order or direction in the nature of certiorari quashing the Government Order dated 12.3.2018 (Annexure No.4 to the writ petition).</p>
6	15794 of 2018 (C/M Muslim Inter College and another Vs. State of U.P. and others)	<p>(i) issue a writ, order or direction of suitable nature declaring the impugned Government Notification dated 20.3.2018 (published in official gazette on 24.3.2018) enclosed as Annexure No.8 to this</p>

		<p>petition) as ultra-vires to the provision of Constitution of India and U.P. Intermediate Education Act, 1921.</p> <p>(ii) issue writ of certiorari quashing the Government Order dated 12.3.2018 (copy enclosed as Annexure No.7 to this petition).</p> <p>(iii) issue a writ, order or direction in the nature of mandamus commanding respondents to permit petitioners to fill all vacant posts in their College in accordance with the un-amended provisions of Regulation 17 contained in Chapter-II of the U.P. Intermediate Education Act, 1921.</p>
7	17434 of 2018 (C/M St. Judes Inter College Vs. State of U.P. and others	<p>(i) to issue writ, order or direction in the nature of certiorari quashing the Government Order dated 12.3.2018 followed by Gazette Notification dated 20.3.2018 issued by State Govt. (copy enclosed as Annexure No.6 to this petition).</p> <p>(ii) to issue a writ, order or direction in the nature of mandamus restraining respondents from giving effect to the Govt. Order dated 12.3.2018 followed by U.P. Gazette Notification dated 20.3.2018.</p>
8	18488 of 2018 (C/M Acharya Nami Sagar Jain Inter College and another Vs. State of U.P. and others)	<p>(a) Issue a writ, order or direction of suitable nature holding impugned notification dated 20.3.2018 (published in official gazette on 24.3.2018) as <i>ultra vires</i> to the Constitution and U.P. Intermediate Education Act (copy of the impugned Notification dated 20.3.2018 is enclosed as Annexure No.3 to this petition).</p> <p>(b) Issue writ, order of direction in the nature of certiorari to quash Government Order dated 12.3.2018 (Annexure-1) issued by respondent no.1 and impugned orders dated 3.8.2018 and 10.8.2018 (Annexures No.8 and 10) passed by respondent no.5.</p>
9	21083 of 2018 (C/M Sri Shanti Sagar Digambar Jain Kanya Inter College Vs. State of U.P. & others)	<p>(i) to issue a writ, order or direction in the nature of mandamus declaring Notification dated 20.3.2018 published in U.P. Gazette part-4 dated 24.3.2018 (Annexure-4 to the writ petition) as <i>ultra vires</i> to Article 30 of the Constitution and Section 16-FF of U.P. Intermediate Education Act (copy of the impugned Notification dated 20.3.2018 and to treat the same as null and void.</p> <p>(ii) to issue writ, order or direction in the nature of certiorari, quashing the Government Order dated 12.3.2018 (Annexure No.3 to the petition) issued by State Govt.</p> <p>(iii) to issue a writ, order or direction in the nature of mandamus commanding the respondents to permit the petitioner to fill all vacant posts assistant teachers in the College in accordance with un-amended provisions of Regulation 17 contained in Chapter-II of the U.P. Intermediate Education Act, 1921.</p>

10	21592 of 2018 (C/M Jain Sthanakwasi Girls Inter College Vs. State of U.P. & others)	<p>(i) to issue a writ, order or direction in the nature of mandamus declaring Notification dated 20.3.2018 published in U.P. Gazette part-4 dated 24.3.2018 (Annexure-6 to the writ petition) as <i>ultra vires</i> to Article 30 of the Constitution and Section 16-FF of U.P. Intermediate Education Act (copy of the impugned Notification dated 20.3.2018 and to treat the same as null and void.</p> <p>(ii) to issue writ, order or direction in the nature of certiorari, quashing the Government Order dated 12.3.2018 (Annexure No.4 to the petition) issued by State Govt.</p> <p>(iii) to issue a writ, order or direction in the nature of mandamus commanding the respondents to permit the petitioner to fill all vacant posts Lecturers and L.T. Grade posts which are lying vacant in the College in accordance with un-amended provisions of Regulation 17 contained in Chapter-II of the U.P. Intermediate Education Act, 1921.</p>
11	21900 of 2019 (C/M Talimuddin Higher Secondary School and another Vs. State of U.P. and others).	<p>(i) to issue a writ, order or direction of suitable nature holding and declaring amended Regulation 17(1)(d) contained in Chapter-II of of U.P. Intermediate Education Act notified vide notification dated 20.3.2018 (published in U.P. Gazette on 24.3.2018 (Annexure-7 to the writ petition) as <i>ultra vires</i> to Article 30 of the Constitution and the provisions of Section 16-FF of U.P. Intermediate Education Act.</p> <p>(i-A) Issue writ, order or direction of suitable nature of holding and declaring the Government Order dated 12.3.2018 (Annexure No.8-A to the petition) as <i>ultra vires</i> to Article 30 of the Constitution and the provisions of Section 16-FF of U.P. Intermediate Education Act to the extent it amends Regulation 17 of Chapter-II of U.P. Intermediate Education Act, 1921.</p> <p>(ii) to issue a writ, order or direction in the nature of mandamus commanding the respondents to permit the petitioners to fill all vacant posts in their Colleges in accordance with provisions Section 16-FF of U.P. Intermediate Education Act, 1921 and Section 16-FF of U.P. Intermediate Education Act, 1921 un-amended of various clauses of the Regulation 17(1)(d) contained in Chapter-II of U.P. Intermediate Education Act, 1921.</p>
12	25524 of 2018 (C/M Canossa Convent Girls Inter College and another Vs. State of U.P. & others).	<p>(i) to issue writ, order or direction in the nature of certiorari quashing the Government Order dated 12.3.2018 followed by Gazette Notification dated 20.3.2018 issued by State Govt. vide letter dated 4.10.2018 by DIOS (copy enclosed as Annexure No.5 to this petition).</p> <p>(ii) to issue a writ, order or direction in the nature of mandamus restraining respondents from giving</p>

		effect to the Govt. Order dated 12.3.2018 followed by U.P. Gazette Notification dated 20.3.2018 followed by letter dated 4.10.2018.
13	26001 of 2018 (C/M Swami Atmdev Gopalanand Inter College, Farrukhabad, and another Vs. State of U.P. and others)	(i) to issue a writ, order or direction in the nature of certiorari quashing the impugned notification dated 20.3.2018 (Annexure-3 to the writ petition) issued by State Govt.
14	26442 of 2018 (C/M Shri Kund Kund Jain Inter College Vs. State of U.P. and others)	(i) Issue a writ, order or direction in the nature of certiorari quashing the amendments affected by notification dated 20.3.2018 as published in the U.P. Gazette dated 24.3.2018 as ultra-vires the Constitution and legally inoperative.
15	3708 of 2019 (C/M Sajida Girls Inter College and another Vs. State of U.P. and others)	(i) to issue a writ, order or direction in the nature of certiorari quashing the impugned notification dated 20.3.2018 (Annexure-3 to the writ petition) issued by State Govt. as it is unconstitutional and <i>ultra-vires</i> to Article 30 of the Constitution of India.
16	5286 of 2019 (C/M A.L. Nomani Inter College and another vs. State of U.P. and others)	(i) to issue a writ, order or direction of suitable nature holding and declaring the amended Regulation 17(1)(d) contained in Chapter-II of the U.P. Intermediate Education Act, 1921 notified vide notification dated 20.3.2018 (published in official gazette on 24.3.2018) as <i>ultra vires</i> to Article 30 of the Constitution and to the provisions of Section 16-FF of U.P. Intermediate Education Act, 1921 (Annexure No.7 to this petition) and to struck down the impugned amendment. (i)-A. to issue a writ, order or direction of suitable nature holding and declaring the Govt. Order dated 12.08.2019 (Annexure 7-A) as ultra vires to Article 30 of the Constitution of India and to the provisions of Section 16-FF of U.P. Intermediate Education Act, 1921 to the extent it amends Regulation 17 contained in Chapter-II of the U.P. Intermediate Education Act, 1921. (ii) to issue a writ, order or direction in the nature of mandamus commanding respondents to permit to fill all vacant posts in their Colleges in accordance with the provisions of Section 16-FF of U.P. Intermediate Education Act, 1921 un-amended of various clauses of Regulation 17(1)(d) contained in Chapter-II of the U.P. Intermediate Education Act, 1921.
17	5289 of 2019 (C/M Mohammad Ali Purva Madhyamik Vidyalaya and another Vs. State of U.P. and others)	(i) to issue a writ, order or direction of suitable nature holding and declaring the amended Regulation 17(1)(d) contained in Chapter-II of the U.P. Intermediate Education Act, 1921 notified vide notification dated 20.3.2018 (published in official gazette on 24.3.2018) Annexure-6 as <i>ultra vires</i> to Article 30 of the Constitution and to the

		<p>provisions of Section 16-FF of U.P. Intermediate Education Act, 1921 and to struck down the same.</p> <p>(i)-A. to issue a writ, order or direction of suitable nature holding and declaring the Govt. Order dated 12.08.2019 (Annexure 6-A) as <i>ultra vires</i> to Article 30 of the Constitution of India and to the provisions of Section 16-FF of U.P. Intermediate Education Act, 1921 to the extent it amends Regulation 17 contained in Chapter-II of the U.P. Intermediate Education Act, 1921.</p> <p>(ii) to issue a writ, order or direction in the nature of mandamus commanding respondents to permit to fill all vacant posts in their Colleges in accordance with the provisions of Section 16-FF of U.P. Intermediate Education Act, 1921 un-amended of various clauses of Regulation 17(1)(d) contained in Chapter-II of the U.P. Intermediate Education Act, 1921 from giving effect to the Govt. Order dated 12.3.2018 in respect of petitioners college being minority institutions protected under Article 30 of the Constitution of India.</p>
18	5291 of 2019 (C/M R.A. Qidwai Balika Inter College and 2 others Vs. State of U.P. and others).	<p>(i) to issue a writ, order or direction of suitable nature holding and declaring the amended Regulation 17(1)(d) contained in Chapter-II of the U.P. Intermediate Education Act, 1921 notified vide notification dated 20.3.2018 (published in official gazette on 24.3.2018) as <i>ultra vires</i> to Article 30 of the Constitution and to the provisions of Section 16-FF of U.P. Intermediate Education Act, 1921 (Annexure-10).</p> <p>(i)-A. to issue a writ, order or direction of suitable nature holding and declaring the Govt. Order dated 12.08.2019 (Annexure 10-A) as <i>ultra vires</i> to Article 30 of the Constitution of India and to the provisions of Section 16-FF of U.P. Intermediate Education Act, 1921 to the extent it amends Regulation 17 contained in Chapter-II of the U.P. Intermediate Education Act, 1921.</p> <p>(ii) to issue a writ, order or direction in the nature of mandamus commanding respondents to permit petitioners to fill all vacant posts in their Colleges in accordance with the provisions of Section 16-FF of U.P. Intermediate Education Act, 1921 read with of Section 16-FF of U.P. Intermediate Education Act, 1921 un-amended of various clauses of Regulation 17(1)(d) contained in Chapter-II of the U.P. Intermediate Education Act, 1921.</p>
19	5292 of 2019 (C/M Kidwai Memorial Girls Inter College Vs. State of U.P. and others)	<p>(A) Issue writ, order or direction in the nature of mandamus declaring the impugned Government Order dated 12.3.2018 (Annexure-4) as <i>ultra vires</i> to the provisions of Article 30 of the Constitution of India and the provision of U.P. Intermediate Education Act, 1921.</p> <p>(B) Issue a writ, order or direction in the nature of</p>

		mandamus commanding and directing respondent authorities to not to give effect the impugned Govt. Order dated 12.3.2018 as far as it relates to the Minority Educational Institutions (C) Issue a writ, order or direction of suitable nature holding and declaring the Govt. Order dated 12.8.2019 (Annexure 4-A) as ultra vires to Article 30 of the Constitution of India and to the provisions of Section 16-FF of U.P. Intermediate Education Act, 1921 to the extent it amends Regulation 17 of Chapter-II of the U.P. Intermediate Education Act, 1921.
20	5295 of 2019 (C/M M.D. Jain Uchattar Madhyamik Vidyalaya and another Vs. State of U.P. and others)	i. A writ, order or direction in the nature of certiorari quashing the impugned order dated 18.5.2018 passed by Joint Director of Education, Agra Region, Agra (Annexure-8 to the writ petition), in so far as it disapproved the selections made by the petitioners' management for appointment against teaching post. ii. A writ, order or direction in the nature of certiorari declaring the amendments affected by notification dated 20.3.2018 as published in the U.P. Gazette dated 24.3.2018 as ultra-vires the Constitution and legally inoperative. iii. A writ, order or direction of suitable nature commanding the respondents to permit the candidates selected for the two posts of Assistant Teachers in L.T. Grade and to function in their respective posts and also to sanction the disbursement emolument regularly every month.
21	5297 of 2019 (C/M Anglo Bengali Girls Inter College and another Vs. State of U.P. and others)	i. to issue a writ, order or direction of suitable nature holding the impugned Notification dated 20.3.2018 (as published in the U.P. Gazette dated 24.3.2018) as <i>ultra-vires</i> to the Constitution and the U.P. Intermediate Education Act (copy of impugned notification dated 20.3.2018 is enclosed as Annexure-5 to the writ petition). ii. to issue writ of certiorari quashing the Government Order dated 12.3.2018 (copy of Govt. Order dated 12.3.2018 is enclosed as Annexure-3 to the writ petition). iii. to issue a writ, order or direction in the nature of mandamus commanding the respondents to permit the petitioners to fill all vacant posts in their institution in accordance with the un-amended provisions of Regulation 17 contained in Chapter-II of U.P. Intermediate Education Act, 1921.
22	5299 of 2019 (C/M Okm Inter College Lar and 2 Others Vs. State of U.P. and others)	i) Issue a writ, order or direction in the nature of certiorari declaring the amendment affected by notification dated 20.3.2018 as published in U.P. Gazette dated 24.3.2018 as <i>ultra-vires</i> of Constitution and legally inoperative.
23	5300 of 2019 (C/M Public	(i) to issue a writ, order or direction of suitable

	Balika Inter College and another Vs. State of U.P and others)	<p>nature holding and declaring the amended Regulation 17(1)(d) contained in Chapter-II of the U.P. Intermediate Education Act, 1921 notified vide notification dated 20.3.2018 (published in official gazette on 24.3.2018) as <i>ultra vires</i> to Article 30 of Constitution and to the provisions of Section 16-FF of U.P. Intermediate Education Act, 1921 (Annexure-7).</p> <p>(i)-A. to issue a writ, order or direction of suitable nature holding and declaring the Govt. Order dated 12.08.2019 (Annexure 7-A) as <i>ultra vires</i> to Article 30 of the Constitution of India and to the provisions of Section 16-FF of U.P. Intermediate Education Act, 1921 to the extent it amends Regulation 17 contained in Chapter-II of the U.P. Intermediate Education Act, 1921.</p> <p>(ii) to issue a writ, order or direction in the nature of mandamus commanding respondents to permit petitioners to fill all vacant posts in their Colleges in accordance with the provisions of Section 16-FF of U.P. Intermediate Education Act, 1921 read with Section 16-FF of U.P. Intermediate Education Act, 1921 un-amended of various clauses of Regulation 17(1)(d) contained in Chapter-II of the U.P. Intermediate Education Act, 1921.</p>
24	5315 of 2019 (C/M Hafiz Mohammad Siddique Islamia Inter College and another Vs. State of U.P. and others)	<p>(i) to issue a writ, order or direction of suitable nature holding and declaring the amended Regulation 17(1)(d) contained in Chapter-II of the U.P. Intermediate Education Act, 1921 notified vide notification dated 20.3.2018 (published in official gazette on 24.3.2018) as <i>ultra vires</i> to Article 30(1) of the Constitution of India and to the provisions of Section 16-FF of U.P. Intermediate Education Act, 1921 (Annexure No.8 to this petition) and to struck down the impugned amendment.</p> <p>(i)-A. to issue a writ, order or direction of suitable nature holding and declaring the Govt. Order dated 12.08.2019 (Annexure 8-A) as <i>ultra vires</i> to Article 30 of the Constitution of India and to the provisions of Section 16-FF of U.P. Intermediate Education Act, 1921 to the extent it amends Regulation 17 contained in Chapter-II of the U.P. Intermediate Education Act, 1921.</p> <p>(ii) to issue a writ, order or direction in the nature of mandamus commanding respondents to permit to fill all vacant posts in petitioner's College in accordance with the provisions of Section 16-FF of U.P. Intermediate Education Act, 1921 read with un-amended Regulation 17 contained in Chapter-II of the U.P. Intermediate Education Act, 1921.</p>
25	5316 of 2019 (C/M St. Marys Inter College and another Vs. State of U.P.	(i) to issue writ, order or direction in the nature of certiorari quashing the impugned Government Order dated 12.3.2018 and Gazette Notification

	and others)	<p>dated 20.3.2018 together issued by State Govt. (copy enclosed as Annexure-6 to this petition).</p> <p>(ii) to issue a writ, order or direction in the nature of mandamus restraining respondents from giving effect to the Govt. Order dated 12.3.2018 followed by Gazette Notification dated 20.3.2018.</p> <p>(iii) to issue any other writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.</p> <p>(iv) to award costs of the petition to the petitioners.</p>
26	5317 of 2019 (C/M. St. Francis High School Vs. State of U.P. and others)	<p>(i) to issue writ, order or direction in the nature of certiorari quashing the impugned Government Order dated 12.3.2018 and Gazette Notification dated 20.3.2018 together issued by State Govt. (copy enclosed as Annexure-6 to this petition).</p> <p>(ii) to issue a writ, order or direction in the nature of mandamus restraining respondents from giving effect to the Government Order dated 12.3.2018.</p>
27	5320 of 2019 (C/M Of Chaman Lal Digamber Jain Kanya Inter College Rampur and 9 Others Vs. State of U.P. and others)	<p>(i) Issue a writ, order or direction in the nature of certiorari quashing the impugned Gazette notification dated 20.3.2018 (published in official gazette on 24.3.2018) and Government Order dated 12.3.2018 (Annexure-4) as ultra-vires to the provisions of Section 16-FF of Intermediate Education Act, 1921 as well as of Article 30 of the Constitution of India.</p> <p>(ii) Issue a writ, order or direction in the nature of mandamus directing respondents to permit the petitioners to fill all the vacant posts in their colleges in accordance with un-amended provisions of U.P. Intermediate Education Act, 1921 as well as Regulations framed thereunder.</p>
28	5321 of 2019 (C/M. Josephs Inter College and 2 others Vs. State of U.P. and others)	<p>(i) to issue writ, order or direction in the nature of certiorari quashing the impugned Government Order dated 12.3.2018 and Gazette Notification dated 20.3.2018 together issued by State Govt. (copy enclosed as Annexure-6 to this petition).</p> <p>(ii) to issue a writ, order or direction in the nature of mandamus restraining respondents from giving effect to the Government Order dated 12.3.2018 followed by Gazette Notification dated 20.3.2018.</p>
29	6148 of 2019 (C/M Falah E Darain Punjabi Inter College Vs. State of U.P. and others)	<p>1. Issue a writ, order or direction of suitable nature holding the impugned Notification dated 20.3.2018 (as published in the Gazette on 24.3.2018) as <i>ultra-vires</i> to the Constitution of India and the U.P. Intermediate Education Act (copy of impugned notification dated 20.3.2018 is enclosed as Annexure-4 to the writ petition).</p> <p>2. Issue a writ, order of direction in the nature of certiorari quashing the Government Order dated 12.3.2018 (copy enclosed as Annexure-2 to the writ petition).</p> <p>3. Issue a writ, order of direction in the nature of</p>

		mandamus commanding respondents to permit the petitioner to fill all vacant posts in his College in accordance with the un-amended provisions of Regulation 17 contained in Chapter-II of U.P. Intermediate Education Act, 1921.
30	8488 of 2019 (C/M Mubarakpur Inter College and another Vs. State of U.P. and others).	<p>(i) to issue a writ, order or direction of suitable nature holding and declaring amended Regulation 17(1)(d) contained in Chapter-II of U.P. Intermediate Education Act notified vide notification dated 20.3.2018 (published in official gazette on 24.3.2018) (Annexure-7 to the writ petition) as <i>ultra vires</i> to Article 30 of the Constitution and the provisions of Section 16-FF of U.P. Intermediate Education Act.</p> <p>(i-A) Issue writ, order or direction of suitable nature of holding and declaring the Government Order dated 12.8.2019 (Annexure No.8-A to the petition) as <i>ultra vires</i> to Article 30 of the Constitution and the provisions of Section 16-FF of U.P. Intermediate Education Act, 1921 to the extent it amends Regulation 17 of Chapter-II of U.P. Intermediate Education Act, 1921.</p> <p>(ii) to issue a writ, order or direction in the nature of mandamus commanding the respondents to permit the petitioners to fill all vacant posts in their Colleges in accordance with provisions Section 16-FF of U.P. Intermediate Education Act, 1921 read with Section 16-FF of U.P. Intermediate Education Act, 1921 un-amended of various clauses of the Regulation 17(1)(d) contained in Chapter-II of U.P. Intermediate Education Act, 1921.</p>
31	13770 of 2019 (C/M Nazibuddaula Girls Inter College Najibabad Bijnor Vs. State of U.P. & others)	<p>A) Issue a writ, order or direction in the nature of certiorari quashing the Government Order dated 12.3.2018 (Annexure-2 to the writ petition) issued by respondent no.1 so far as amendment in Regulation 17(D) of Chapter-II of the U.P. Intermediate Education Act declaring same as <i>ultra-vires</i> to the Articles 29 and 30 of the Constitution of India, as well as, also <i>ultra-vires</i> to the Section 16-FF of U.P. Intermediate Education Act, 1921.</p> <p>B) Issue a writ, order or direction in the nature of mandamus commanding respondents not to implement and give effect to the Government Order dated 12.3.2018 (Annexure-2 to the writ petition) issued by respondent no.1 so far as amendment in Regulation 17(D) of Chapter-II of the U.P. Intermediate Education Act, 1921.</p>
32	20775 of 2018 (C/M Swami Leela Shah Adarsh Sindhi Inter College and another Vs. State of U.P. & others)	(a) a writ, order or direction in the nature of mandamus declaring the notification dated 20.3.2018, as published in U.P. Gazette dated 24.3.2018 (Annexure-7) to be violative of Article 30(1) of Constitution and being <i>ultra vires</i> .

		(b) a suitable writ, order or direction of a suitable nature quashing Government Order dated 12.3.2018 (Annexure No.6). (c) a writ, order or direction of a suit nature commanding the respondents to permit the candidates selected for 8 posts of Assistant Teachers in L.T. Grade to function in the institution on their respective posts and also to sanction and disburse the regular monthly salary on the said post regularly every month.
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13. Since the contention advanced by learned counsel for parties challenging validity of amendment made in Regulation 17 of Chapter-II are broadly common, therefore, we are dealing with the same collectively.

14. Solitary question up for consideration in these writ petitions is whether amendments made in Regulation 17, Chapter-II vide Government Orders dated 12.03.2018, 06.11.2018, 18.04.2019 and 12.08.2019, are regulatory and valid or hit by Articles 29 and 30 of the Constitution of India and Section 16-FF of Act, 1921.

15. Before coming to Act, 1921, we may place on record that for recruitment of teaching staff including Principals, Provincial Legislature enacted U.P. Secondary Education Services Selection Board Act, 1982 (hereinafter referred to as “Act, 1982”) whereunder recruitment of Teachers of Secondary Educational Institutions has to be made by U.P. Secondary Education Services Selection Board (hereinafter referred to as 'Selection Board'). Any appointment made otherwise is void by virtue of Section 16 of the said Act. However, in respect of minority institutions, Act, 1982 has been exempted by virtue of Section 30 thereof, which reads as under :

“30. Exemption to minority Institutions: - *Nothing in this Act shall apply to any institution established and administered by a minority referred to in clause (1) of Article 30 of the Constitution of India.”*

16. In view of Section 30 of Act, 1982, recruitment and selection of Teachers and Principals of Secondary Educational Institutions, which are established and administered by Minority, are not to be made by Selection Board under Act, 1982 but it continues to be governed by the provisions

as existed under Act, 1921.

17. Now we come to Act, 1921, which governs selection and appointment of Teachers and Principals of Secondary Educational Institutions in the State of U.P. established and administered by Minority. We may also notice at this stage that there are some institutions which are not in grant-in-aid or some part thereof is not in grant-in-aid. In all these writ petitions, we are concerned with such institutions which are non-Government Minority Institutions but recognized and getting grant-in-aid for payment of salary to the teaching and non teaching staff and governed by Act, 1971, therefore, they are Government aided minority institutions.

18. Under Act, 1921, Section 16-E provides procedure for selection of Teachers and Heads of Institutions and reads as under:

“16E. Procedure for selection of teachers and head of institutions. - Subject to the provisions of this Act, the Head of Institution and teachers of an institution shall be appointed by the Committee of Management in the manner hereinafter provided.

(2) Every post of Head of Institution or teacher of an institution shall except to the extent prescribed for being filled by promotion, be filled by direct recruitment after intimation of the vacancy to the Inspector and advertisement of the vacancy containing such particulars as may be prescribed, in at least two newspapers having adequate circulation in the State.

(3) No person shall be appointed as Head of Institution or teacher in an institution unless he possesses the minimum qualification prescribed by the regulations :

Provided that a person who does not possess such qualification may also be appointed if he has been granted exemption by the Board having regard to his education, experience and other attainments.

(4) Every application for appointment as Head of Institution or teacher of an institution in pursuance of an advertisement

published under sub-section (2) shall be made to the Inspector and shall be accompanied by such fee which shall be paid in such manner as may be prescribed.

(5) (i) *After the receipt of applications under sub-section (4), the **Inspector shall cause to be awarded**, in respect of each such applications, **quality-point marks in accordance with the procedure and principles prescribed**, and shall **thereafter, forward the applications to the Committee of Management**.*

(ii) *The applications shall be dealt with, the candidates shall be called for interview. and the **meeting of the Selection Committee shall be held, in accordance with the Regulation**.*

(6) *The **Selection Committee** shall prepare a **list containing** in order of preference the names, **as far as practicable**, of three candidates for **each post found by it to be suitable for appointment** and shall **communicate its-recommendations together with such list to the Committee of Management**.*

(7) *Subject to the provisions of sub-section (8), the Committee of Management shall, on receipt of the recommendations of the Selection Committee under sub-section (6), first offer appointment to the candidate given the first preference by the Selection Committee, and on his failure to join the post, to the candidate next to him in the list prepared by the Selection Committee under this section, and on the failure of such candidate also, to the last candidate specified in such list.*

(8) *The Committee of Management shall, **where it does not agree with the recommendations of the Selection Committee, refer the matter together with the reasons of such disagreement to the Regional Deputy Director of Education** in the case of appointment to the post of Head of Institution and to the Inspector in the case of appointment to the post of teacher of an Institution, and his decision shall be final.*

(9) Where no candidate approved by the Selection Committee for appointment is available, a fresh selection shall be held in the manner laid down in this section.

(10) Where the **State Government**, in case of the appointment of Head of Institution, and the Director in the case of the appointment of teacher of an institution, **is satisfied** that any **person has been appointed as Head of Institution or teacher, as the case may be, in contravention of the provisions of this Act, the State Government or, as the case may be, the Director may, after affording an opportunity of being heard to such person, cancel such appointment and pass such consequential order as may be necessary.**

(11) Notwithstanding anything contained in the foregoing sub-sections, appointments in the case of a temporary vacancy caused by the grant of leave to an incumbent for a period not exceeding six months or by death, termination or otherwise of an incumbent occurring during an educational session, may be made by direct recruitment or promotion without reference to the Selection Committee in such manner and subject to such conditions as may be prescribed :

Provided that no appointment made under this sub-section shall, in any case, continue beyond the end of the educational session during which such appointment was made.”

(Emphasis added)

19. Section 16-F of Act, 1921, provides procedure for constitution of Selection Committee and reads as under :-

“16-F. Selection Committees. - (1) For the selection of candidates for appointment as Head of an Institution, there shall be a Selection Committee consisting of, -

(i) the President or any member of the Committee of Management nominated by the Committee by resolution in that

behalf, who shall be the Chairman;

(ii) a **member of the Committee of Management** other than the one referred to in clause (i), nominated by it in this behalf;

(iii) **three experts nominated by the Regional Deputy Director of Education** from persons not belonging to the district in which the institution is situated, out of the panel of names prepared under this section.

(2) For the selection of candidates for appointment as teacher in an institution, there shall be a Selection Committee consisting of, -

(i) the **President** or any member of the Committee of Management, nominated by the Committee by resolution in that behalf, who shall be the Chairman;

(ii) the **Head of such institution**;

(iii) **three experts nominated by the Inspector from** persons not belonging to the district in which the institution is situated, out of the panel of names prepared under this section.

(3) In respect of any institution for which Authorized Controller has been appointed under this Act, the Authorized Controller shall, in relation to such institution be deemed substituted for the person referred to in clauses (i) and (ii) of sub-section (1) or clause (i) of sub-section (2), as the case may be.

(4) A panel of experts for every region shall be drawn by the Director in such manner as may be prescribed and shall be revised once every three years.

(5) The **business of the Selection Committee shall be conducted in such manner as may be prescribed :**

Provided that the majority of the total membership of any Selection Committee shall form the quorum of such Committee :

Provided further that no recommendation made by the Selection Committee in respect of any candidate shall be valid, unless two of the experts referred to in clause (iii) of sub-section (1)

or sub-section (2), as the case may be, have agreed to it.

(6) *No proceeding of the Selection Committee shall be invalid by reason only of a defect in its constitution or vacancy among its members.*” (Emphasis added)

20. Applicability of Sections 16-E and 16-F to some extent has been restricted by Section 16-FF of Act, 1921 and it provides manner of selection by excluding applicability of Section 16-E(4) and Section 16-F. Section 16-FF reads as under:

“16-FF. Minority savings as to minority institutions. - (1) *Notwithstanding anything in sub-section (4) of Section 16-E, and Section 16-F, the Selection Committee for the appointment of a Head of Institution or a teacher of an institution established and administered by a minority referred to in clause (1) of Article 30 of the Constitution shall consist of five members (including its Chairman) nominated by the Committee of Management :*

Provided that one of the members of the Selection Committee shall, -

(a) in the case of appointment of the Head of an Institution, be an expert selected by the Committee of Management from a panel of experts prepared by the Director;

(b) in the case of appointment of a teacher, be the Head of the Institution concerned.

(2) The procedure to be followed by the Selection Committee referred to in sub-section (1) shall be such as may be prescribed.

(3) No person selected under this section shall be appointed, unless, -

(a) in the case of the Head of an Institution the proposal of appointment has been approved by the Regional Deputy Director of Education; and

(b) in the case of a teacher such proposal has been approved by the Inspector.

(4) The Regional Deputy Director of Education or the Inspector, as the case may be, shall not withhold approval for the selection made under this section where the person selected possesses the minimum qualifications prescribed and is otherwise eligible.

(5) Where the Regional Deputy Director of Education or the Inspector, as the case may be, does not approve of a candidate selected under this section, the Committee of Management may, within three weeks from the date of receipt of such disapproval, make a representation to the Director in the case of the Head of Institution, and to the Regional Deputy Director of Education in the case of a teacher.

(6) Every order passed by the Director or the Regional Deputy Director of Education on a representation under sub-section (5) shall be final.” (Emphasis added)

21. Thus, Section 16-FF of Act, 1921 makes it very clear that Section 16-F will not apply to minority institutions since an overriding effect has been given by non-obstante clause and in respect of Section 16-E non obstinate clause apply to only sub-section(4) and rest Section 16-F therefore, would be applicable.

22. In order to put the things straight, we may also refer to Section 16-EE of Act, 1921, which makes provisions for absorption of retrenched employees. This Section was inserted by U.P. Act No.1 of 1981. Therein Sub-section (6) was inserted by U.P. Act No. 9 of 1981 with effect from 11.02.1981. Section 16-EE has been declared inapplicable to the Institutions established and administered by a minority referred to in Clause (1) of Article 30 of the Constitution of India.

23. Sub-section (2) of Section 16-FF of Act, 1921 provides that procedure to be followed by the Selection Committee referred to in sub-section (1) shall be such as may be 'prescribed'. Section 2(c) of Act, 1921 provides that 'Prescribed' means 'prescribed by Regulations'.

24. Again 'Regulations' are defined in sub-section (e) of Section 2 of

Act, 1921. It says that 'Regulation' means Regulations made by Board under Act, 1921. Power to make 'Regulations' have been conferred upon Board vide Section 15, which reads as under:

“15. Power of Board to make Regulations. - *(1) The Board may make Regulations for the purpose of carrying into effect the provisions of this Act.*

(2) In particular and without prejudice to the generality of the foregoing power the Board may make Regulations providing for all or any of the following matters, namely, -

(a) the constitution, powers and duties of Committees;

(b) the conferment of diplomas and certificates;

(c) the conditions of recognitions of institutions for the purpose of its examinations;

(d) the course of study to be laid down for all certificates and diplomas;

(e) the conditions under which candidates shall be admitted to the examinations of the Board and shall be eligible for diplomas and certificates;

(f) the fees for admission to the examinations of the Board;

(g) the conduct of examinations;

(h) the appointment of examiners and their duties and powers in relation to the Board's examinations;

(i) the election of members to the Board under [clause (c)] of sub-section (1) of Section 3;

(j) the admission of institutions to the privileges of recognition and the withdrawal of recognition;

(k) all matters which by this Act are to be or may be provided for by Regulations;

(l) the conditions under which grants-in-aid shall be given to institutions recognized by the Board;

[(m) the formations of parent-teacher association.”

25. Section 16 of Act, 1921, however, provides that Regulations under Section 15 shall be made only with the previous sanction of the State Government and shall be published in the Gazette. Sub-section (2) thereof confers power upon State Government to sanction any Regulations proposed by Board, either without modification or with such modification as may be applicable. Section 16 of Act, 1921 reads as under:

“16. Previous publication and sanction of Regulations made by Board. - (1) *Regulations under Section 15 shall be made only with the previous sanction of the State Government and shall be published in the Gazette.*

(2) *The State Government may sanction any such regulation proposed by the Board either without modification or with such modification as it thinks fit.”*

26. Regulation have been made by Board under Section 15, which are called “Regulations under U.P. Intermediate Education Act, 1921” (hereinafter referred as the Regulations framed under Act, 1921). It starts from Part II-A and divided in four Chapters, i.e., Chapter-I, Chapter-II, Chapter-III and Chapter-IV.

27. Chapter-I deals with “Scheme of Administration” and is referable to Sections 16-A, 16-B and 16-C. Chapter-II deals with Regulations relating to appointment of Heads of the Institutions and teachers and is referable to Sections 16-E, 16-F and 16-FF. Chapter-III deals with conditions of service and is referable to Section 16-G. Chapter-IV deals with Committees of the Board. Then there is Part II-B and it contains Chapters I to XVI, but we are not going in details thereof as the same are not relevant for our purpose. Part-III contains Bye-Laws of Board made under Section 20 of Act, 1921. Part-IV of Regulations deals with Officers and Members of the Board. Part-V deals with Rules of the Board and Part-VI deals with necessary directions regarding allowances in connection with Board's duties.

28. For our purpose Part II-A, Chapter-II of the Regulations is

relevant. There also controversy in question is confined to Regulation 17 which provides procedure for selection of Teachers and Principals of recognized educational Institutions by direct recruitment as contemplated in Section 16-FF.

29. Regulation 17 which is the provision in controversy in all these writ petitions, as it stood earlier and amended by Notification dated 20.03.2018 (published in Official Gazette dated 24.03.2018) and further vide Government orders (hereinafter referred to as “G.O.”) dated 06.11.2018, 18.04.2019 and 12.08.2019, are placed in the form of Chart as under:

S.No.	Initial	As amended vide Notification dated 20.03.2018	As amended vide G.O. dated 06.11.2018	As amended vide G.O. dated 18.04.2019	As amended vide G.O. dated 12.08.2019
	17-धारा 16 चच में निर्दिष्ट किसी मान्यता प्राप्त संस्था में सीधी भर्ती द्वारा संस्था के प्रधान और अध्यापकों की रिक्ति को भरने के लिए निम्नलिखित प्रक्रिया होगी- (क) प्रबन्धाधिकरण द्वारा सीधी भर्ती से भरी जाने वाली रिक्तियों की संख्या अवधारित किये जाने के पश्चात संस्था के प्रबन्धक द्वारा कम से कम एक हिन्दी और एक अंग्रेजी समाचार पत्र में जिसका राज्य में पर्याप्त परिचालन हो, पद विज्ञापित किये जायेंगे जिसमें रिक्तियों के प्रकार (अर्थात् अस्थायी है या स्थायी) तथा रिक्तियों की संख्या पद का विवरण (अर्थात् प्रिंसिपल या प्रधानाध्यापक, प्रवक्ता या एल0टी0, सी0टी0 या जे0टी0सी0, बी0टी0सी0 श्रेणी के अध्यापक तथा ऐसे विषय जिसमें या जिनमें प्राध्यापक या अध्यापक की आवश्यकता हो), पद के लिए विहित वेतनमान और अन्य भत्ते, अपेक्षित	17-धारा 16 चच में निर्दिष्ट किसी मान्यता प्राप्त संस्था में सीधी भर्ती द्वारा संस्था के प्रधान और अध्यापकों की रिक्ति को भरने के लिए निम्नलिखित प्रक्रिया होगी- (क) प्रबन्धाधिकरण द्वारा सीधी भर्ती से भरी जाने वाली रिक्तियों की संख्या अवधारित किये जाने के पश्चात संस्था के प्रबन्धक द्वारा कम से कम एक हिन्दी और एक अंग्रेजी समाचार पत्र में जिसका राज्य में पर्याप्त परिचालन हो, पद विज्ञापित किये जायेंगे जिसमें रिक्तियों के प्रकार (अर्थात् अस्थायी है या स्थायी) तथा रिक्तियों की संख्या पद का विवरण (अर्थात् प्रिंसिपल या प्रधानाध्यापक, प्रवक्ता या एल0टी0, सी0टी0 या जे0टी0सी0, बी0टी0सी0 श्रेणी के अध्यापक तथा ऐसे विषय जिसमें या जिनमें प्राध्यापक या अध्यापक की आवश्यकता हो), पद के लिए विहित वेतनमान और अन्य	17-धारा 16 चच में निर्दिष्ट किसी मान्यता प्राप्त संस्था में सीधी भर्ती द्वारा संस्था के प्रधान और अध्यापकों की रिक्ति को भरने के लिए निम्नलिखित प्रक्रिया होगी- (क) प्रबन्धाधिकरण द्वारा सीधी भर्ती से भरी जाने वाली रिक्तियों की संख्या अवधारित किये जाने के पश्चात संस्था के प्रबन्धक द्वारा कम से कम एक हिन्दी और एक अंग्रेजी समाचार पत्र में जिसका राज्य में पर्याप्त परिचालन हो, पद विज्ञापित किये जायेंगे जिसमें रिक्तियों के प्रकार (अर्थात् अस्थायी है या स्थायी) तथा रिक्तियों की संख्या पद का विवरण (अर्थात् प्रिंसिपल या प्रधानाध्यापक, प्रवक्ता या एल0टी0, सी0टी0 या जे0टी0सी0, बी0टी0सी0 श्रेणी के अध्यापक तथा ऐसे विषय जिसमें या जिनमें प्राध्यापक या अध्यापक की आवश्यकता हो), पद के लिए विहित वेतनमान और अन्य	17-धारा 16- चच में निर्दिष्ट किसी मान्यता प्राप्त संस्था में सीधी भर्ती द्वारा संस्था के प्रधान और अध्यापकों की रिक्ति को भरने के लिए निम्नलिखित प्रक्रिया होगी:- (क) प्रबन्धाधिकरण द्वारा सीधी भर्ती से भरी जाने वाली रिक्तियों की संख्या अवधारित किए जाने के पश्चात संस्था के प्रबन्धक द्वारा कम से कम एक हिन्दी और एक अंग्रेजी समाचार-पत्र में जिसका राज्य में पर्याप्त परिचालन हो, पद विज्ञापित किए जायेंगे जिसमें रिक्तियों के प्रकार (अर्थात् अस्थायी / स्थायी) तथा रिक्तियों की संख्या, पद का विवरण,(अर्थात् प्रधानाचार्य, प्रधानाध्यापक, प्रवक्ता, सहायक अध्यापक या सम्बद्ध प्राईमरी श्रेणी के अध्यापक) तथा ऐसे विषय जिसमें प्रधानाध्यापक या अध्यापक की आवश्यकता हो, पद के लिए विहित वेतन-मान और अन्य भत्ते अपेक्षित अनुभव, न्यूनतम अर्हता और	17- धारा 16-चच में निर्दिष्ट किसी मान्यता प्राप्त संस्था में सीधी भर्ती द्वारा संस्था के प्रधान और अध्यापकों की रिक्ति को भरने के लिए निम्नलिखित प्रक्रिया होगी:- (क) प्रबन्धाधिकरण द्वारा सीधी भर्ती से भरी जाने वाली रिक्तियों की संख्या अवधारित किए जाने के पश्चात संस्था के प्रबन्धक द्वारा कम से कम एक हिन्दी और एक अंग्रेजी समाचार-पत्र में जिसका राज्य मे अधिक एवं पर्याप्त परिचालन हो, पद विज्ञापित किए जायेंगे, जिसमें रिक्तियों की संख्या, पद का विवरण, (अर्थात् प्रधानाचार्य, प्रधानाध्यापक, प्रवक्ता, सहायक अध्यापक या सम्बद्ध प्राईमरी श्रेणी के अध्यापक) तथा ऐसे विषय जिसमें प्राध्यापक या अध्यापक की आवश्यकता हो, पद के लिए विहित वेतनमान और अन्य भत्ते, अपेक्षित अनुभव, न्यूनतम

	विनियम 10 के खण्ड (क) में निर्दिष्ट धनराशि से अधिक न हो, ले सकता है।	प्रमाणित प्रतियां होंगी। प्रबन्धाधिकारण आवेदन-पत्र के लिए प्रपत्र का मूल्य जो विनियम 10 के खण्ड (क) में निर्दिष्ट धनराशि से अधिक न हो, ले सकता है।	प्रमाणित प्रतियां होंगी। प्रबन्धाधिकारण आवेदन-पत्र के लिए प्रपत्र का मूल्य जो विनियम 10 के खण्ड (क) में निर्दिष्ट धनराशि से अधिक न हो, ले सकता है।	विनियम 10 के खण्ड (क) में है और प्रशंसा-पत्रों की प्रमाणित प्रतियां होंगी। प्रबन्धाधिकरण आवेदन -पत्र के लिए प्रपत्र का मूल्य जो विनियम 10 के खण्ड (क) में निर्दिष्ट धनराशि से अधिक न हो, ले सकता है।	
	(ग) किसी संस्था में नियोजित और अन्यत्र या किसी संस्था में किसी पद के लिए आवेदन करने वाले व्यक्ति का आवेदन-पत्र उसके नियोजक द्वारा रोका नहीं जायेगा बल्कि उसे सम्बद्ध प्राधिकारी को तुरन्त अग्रसारित किया जायेगा।	(ग) किसी संस्था में नियोजित और अन्यत्र या उसी संस्था में किसी पद के लिए आवेदन करने वाले व्यक्ति का आवेदन-पत्र उसके नियोजक द्वारा रोका नहीं जायेगा बल्कि उसे सम्बद्ध प्राधिकारी को तुरन्त अग्रसारित किया जायेगा।	(ग) किसी संस्था में नियोजित और अन्यत्र या उसी संस्था में किसी पद के लिए आवेदन करने वाले व्यक्ति का आवेदन-पत्र उसके नियोजक द्वारा रोका नहीं जायेगा बल्कि उसे सम्बद्ध प्राधिकारी को तुरन्त अग्रसारित किया जायेगा।	(ग) किसी संस्था में नियोजित और अन्यत्र या उसी संस्था में किसी पद के लिए आवेदन करने वाले व्यक्ति का आवेदन-पत्र उसके नियोजक द्वारा रोका नहीं जायेगा बल्कि उसे सम्बद्ध प्राधिकारी को तुरन्त अग्रसारित किया जायेगा।	(ग) किसी संस्था में नियोजित और अन्यत्र या उसी संस्था में किसी पद के लिए आवेदन करने वाले व्यक्ति का आवेदन-पत्र उसके नियोजक द्वारा रोका नहीं जायेगा बल्कि उसे सम्बन्धित प्राधिकारी को तुरन्त अग्रसारित किया जायेगा।
	(घ) अभ्यर्थियों से प्राप्त समस्त आवेदन-पत्र क्रमानुसार संख्यांकित और रजिस्टर में दर्ज किये जायेंगे और अभ्यर्थियों के विवरण समुचित स्तम्भों में अंकित किये जायेंगे, प्रत्येक पद के लिए साक्षात्कार के लिए बुलाये जाने वाले अभ्यर्थियों की संख्या यदि (आवेदको की संख्या उतनी हो) सात होगी। प्रबन्धक, चयन समिति के समस्त सदस्यों तथा समस्त ऐसे अभ्यर्थियों को जो साक्षात्कार के लिए बुलाये जाये, चयन करने के कम से कम दस दिन पूर्व चयन का दिनांक, समय और स्थान की सूचना रजिस्टर्ड डाक द्वारा देगा। चयन समिति तदनुसार चयन करेगी। यदि किसी अपरिहार्य कारणवश धारा-16चच की उपधारा (1) के परन्तुक के खण्ड (क) के अधीन प्रबन्ध समिति द्वारा चयन किया गया विशेषज्ञ निर्धारित दिनांक को चयन में उपस्थित न हो सके तो चयन	(घ) अभ्यर्थियों से प्राप्त समस्त आवेदन-पत्र क्रमानुसार संख्यांकित और रजिस्टर में दर्ज किये जायेंगे और अभ्यर्थियों के विवरण समुचित स्तम्भों में अंकित किये जायेंगे। उक्त आवेदन-पत्रों की संख्यात्मक विवरण सहित सूचना संस्था प्रधान हेतु सम्भागीय संयुक्त शिक्षा निदेशक को तथा जिला विद्यालय निरीक्षक को उपलब्ध करायेगां सम्भागीय संयुक्त शिक्षा निदेशक तथा जिला विद्यालय निरीक्षक द्वारा शिक्षा निदेशक द्वारा निर्धारित निजी संस्था के चयन स्क्रीनिंग / लिखित परीक्षा आयोजित की जायेगी। उक्त प्राप्त आवेदन पत्रों के आधार पर सम्बन्धित चयनित संस्था द्वारा संस्था हेतु 90 अंकों की लिखित परीक्षा (स्क्रीनिंग टेस्ट) कराई जायेगी। साक्षात्कार 10 अंकों	(घ) अभ्यर्थियों से प्राप्त समस्त आवेदन-पत्र क्रमानुसार संख्यांकित और रजिस्टर में दर्ज किए जायेंगे, और अभ्यर्थियों के विवरण समुचित स्तम्भों में अंकित किये जायेंगे। उक्त आवेदन पत्रों की संख्यात्मक विवरण सहित सूचना संस्था प्रधान हेतु संभागीय संयुक्त शिक्षा निदेशक को तथा शिक्षकों हेतु जिला विद्यालय निरीक्षक को उपलब्ध करायेगा। संभागीय संयुक्त शिक्षा निदेशक तथा जिला विद्यालय निरीक्षक द्वारा शिक्षा निदेशक द्वारा निर्धारित निजी संस्था से चयन स्क्रीनिंग/लिखित परीक्षा आयोजित की जायेगी। उक्त प्राप्त आवेदन पत्रों के आधार पर सम्बन्धित चयनित संस्था द्वारा संस्था प्रधान/प्रवक्ता हेतु 90 अंकों की लिखित परीक्षा (स्क्रीनिंग टेस्ट)	(घ) अभ्यर्थियों से प्राप्त समस्त आवेदन-पत्र क्रमानुसार संख्यांकित करने के उपरान्त रजिस्टर में तिथिवार दर्ज किये जायेंगे और अभ्यर्थियों के विवरण समुचित स्तम्भों में अंकित किये जायेंगे। प्रबन्धाधिकरण उक्त आवेदन पत्रों सहित संख्यात्मक विवरण की सूचना संस्था प्रधान हेतु मण्डलीय संयुक्त शिक्षा निदेशक तथा शिक्षकों हेतु जिला विद्यालय निरीक्षक को उपलब्ध करायेगा। मण्डलीय संयुक्त शिक्षा निदेशक तथा जिला विद्यालय निरीक्षक द्वारा, शिक्षा निदेशक द्वारा निर्धारित संस्था के माध्यम से स्क्रीनिंग/लिखित परीक्षा आयोजित करायेगा। उक्त प्राप्त आवेदन पत्रों के आधार पर सम्बन्धित चयनित संस्था द्वारा संस्था प्रधान/प्रवक्ता/सहायक अध्यापक तथा सम्बद्ध प्राईमरी अध्यापक हेतु 90 अंकों की स्क्रीनिंग	(घ) चयनित संस्था द्वारा अभ्यर्थियों से प्राप्त ऑनलाइन समस्त आवेदन-पत्रों की सूची प्रबन्धाधिकरण को उपलब्ध करायी जायेगी। इसके अतिरिक्त संस्था प्रधान के सम्बन्ध में सम्बन्धित संयुक्त शिक्षा निदेशक एवं अध्यापकों के सम्बन्ध में सम्बन्धित जिला विद्यालय निरीक्षक को भी उक्त सूची की प्रति उपलब्ध करायी जायेगी। प्रधान पद हेतु मण्डलीय संयुक्त शिक्षा निदेशक तथा शिक्षकों हेतु जिला विद्यालय निरीक्षक द्वारा स्क्रीनिंग/लिखित परीक्षा एवं साक्षात्कार के सम्बन्ध में प्रबन्धाधिकरण एवं स्क्रीनिंग/लिखित परीक्षा हेतु चयनित संस्था के मध्य समन्वय/पर्यवेक्षण का कार्य किया जायेगा। उक्त प्राप्त आवेदन पत्रों के आधार पर सम्बन्धित चयनित संस्था द्वारा संस्था प्रधान/प्रवक्ता/सहायक अध्यापक तथा

	<p>समिति की बैठक स्थगित कर दी जायेगी।</p>	<p>का होगा। सहायक अध्यापकों के चयन हेतु उक्त लिखित परीक्षा 100 अंकों की होगी तथा साक्षात्कार नहीं लिया जायेगा। उक्त स्क्रीनिंग टेस्ट में रिक्ति के सापेक्ष प्रत्येक पद हेतु श्रेष्ठता के आधार पर 05 चयनित अभ्यर्थियों की सूची (पैनल) तैयार की जायेगी। चयनित संस्था उक्त सूची को संस्था प्रधान हेतु सम्भागीय संयुक्त शिक्षा निदेशक तथा शिक्षकों हेतु जिला विद्यालय निरीक्षक को उपलब्ध करायेगा। सम्भागीय संयुक्त शिक्षा निदेशक / जिला विद्यालय निरीक्षक द्वारा उक्त सूची (पैनल) को सम्बन्धित संस्था प्रबन्धक को इस आशय से उपलब्ध कराई जायेगी कि पैनल में चयनित अभ्यर्थियों के प्रमाण-पत्रों का सम्यक् परीक्षण कर सम्बन्धित चयन समिति संस्था प्रधान एवं प्रवक्ता पद हेतु चयनित अभ्यर्थियों का 10 अंकों का साक्षात्कार आयोजित करे। सहायक अध्यापकों के उपलब्ध कराये गये पैनल में चयनित अभ्यर्थियों जिसमें प्रतीक्षा सूची भी सम्मिलित होगी, के प्रमाण-पत्रों का यथावश्यक सत्यापन कराये जाने के उपरान्त श्रेष्ठता क्रम के अनुसार प्रबन्धक द्वारा जिला विद्यालय निरीक्षक के अनुमोदन के उपरान्त नियुक्ति की जायेगी। संस्था प्रधान एवं प्रवक्ता पद के प्रत्येक पद के लिए साक्षात्कार के लिए बुलाये जाने वाले अभ्यर्थियों को जो</p>	<p>करायी जायेगी। साक्षात्कार 10 अंकों का होगा। सहायक अध्यापकों के चयन हेतु उक्त लिखित परीक्षा 100 अंकों की होगी तथा साक्षात्कार नहीं लिया जायेगा। अल्पसंख्यक संस्थाओं में सहायक अध्यापकों के चयन के सम्बन्ध में लिखित परीक्षा का परिणाम जिला विद्यालय निरीक्षक एवं विद्यालय प्रबन्धतंत्र को उपलब्ध कराया जायेगा और विद्यालय प्रबन्धतंत्र द्वारा उपरोक्त शासनादेश संख्या-2167 / 15-12-2017-1600(55 0) / 2017 दिनांक 12-3-2018 में की गयी व्यवस्था के अनुसार नियुक्ति की कार्यवाही की जायेगी। सम्भागीय संयुक्त शिक्षा निदेशक / जिला विद्यालय निरीक्षक द्वारा उक्त सूची को सम्बन्धित संस्था प्रबन्धक को इस आशय से उपलब्ध करायी जायेगी कि सूची में चयनित अभ्यर्थियों के प्रमाण पत्रों का सम्यक् परीक्षण कर, सम्बन्धित चयन समिति संस्था प्रधान एवं प्रवक्ता पद हेतु चयनित अभ्यर्थियों का 10 अंकों का साक्षात्कार आयोजित करे। सहायक अध्यापकों की उपलब्ध करायी गई सूची में चयनित अभ्यर्थियों, जिसमें प्रतीक्षा सूची भी सम्मिलित होगी, के प्रमाण पत्रों का यथावश्यक सत्यापन कराये जाने के उपरान्त श्रेष्ठता क्रम के अनुसार प्रबन्धक द्वारा जिला विद्यालय निरीक्षक के अनुमोदन के</p>	<p>/ लिखित परीक्षा करायी जायेगी। साक्षात्कार 10 अंकों का होगा। उक्त स्क्रीनिंग / लिखित परीक्षा में रिक्ति के सापेक्ष प्रत्येक पद हेतु श्रेष्ठता के आधार पर 05 अभ्यर्थियों की सूची (पैनल) तैयार की जायेगी। चयनित संस्था उक्त सूची को संस्था प्रधान हेतु मण्डलीय संयुक्त शिक्षा निदेशक तथा शिक्षकों हेतु सम्बन्धित जिला विद्यालय निरीक्षक को उपलब्ध करायेगा। मण्डलीय संयुक्त शिक्षा निदेशक / जिला विद्यालय निरीक्षक द्वारा उक्त सूची (पैनल) को सम्बन्धित संस्था प्रबन्धक को इस आशय से उपलब्ध कराया जायेगा कि पैनल में चयनित अभ्यर्थियों के प्रमाण-पत्रों का सम्यक् परीक्षण कर, सम्बन्धित चयन समिति संस्था प्रधान / प्रवक्ता / सहायक अध्यापक / सम्बद्ध प्राईमरी अध्यापक पद हेतु चयनित अभ्यर्थियों का 10 अंकों का साक्षात्कार आयोजित करें। संस्था प्रधान / प्रवक्ता / सहायक अध्यापक / सम्बद्ध प्राईमरी अध्यापक पद के प्रत्येक पद के लिए साक्षात्कार बुलाये जाने वाले अभ्यर्थियों को, साक्षात्कार तिथि से कम से कम 15 दिन पूर्व साक्षात्कार का दिनांक, समय और स्थान की सूचना रजिस्टर्ड डाक द्वारा संस्था प्रबन्धक द्वारा प्रेषित की जायेगी। निर्धारित तिथि पर चयन समिति तदनुसार साक्षात्कार करायेगी। चयन</p>	<p>सम्बद्ध प्राईमरी अध्यापक हेतु 90 अंकों की स्क्रीनिंग / लिखित परीक्षा करायी जायेगी। साक्षात्कार 10 अंकों का होगा। उक्त स्क्रीनिंग / लिखित परीक्षा में प्रत्येक रिक्ति पद के प्रति 05 अभ्यर्थियों की सूची चयनित संस्था द्वारा तैयार की जायेगी। चयनित संस्था द्वारा उक्त सूची प्रबन्धाधिकरण को उपलब्ध करायी जायेगी तथा उसकी प्रति सम्बन्धित संयुक्त शिक्षा निदेशक एवं जिला विद्यालय निरीक्षक को उपलब्ध करायी जायेगी। प्रबन्धाधिकरण द्वारा स्क्रीनिंग / लिखित परीक्षा में चयनित अभ्यर्थियों के प्रमाण-पत्रों का सम्यक् परीक्षण करने के उपरान्त सम्बन्धित चयन समिति संस्था प्रधान / प्रवक्ता / सहायक अध्यापक / सम्बद्ध प्राईमरी अध्यापक पद हेतु 10 अंकों का साक्षात्कार आयोजित करेगी। संस्था प्रधान / प्रवक्ता / सहायक अध्यापक / सम्बद्ध प्राईमरी अध्यापक पद के प्रत्येक पद हेतु साक्षात्कार के लिए बुलाये जाने वाले अभ्यर्थियों को, साक्षात्कार तिथि से कम से कम 15 दिन पूर्व साक्षात्कार का दिनांक, समय और स्थान की सूचना रजिस्टर्ड डाक द्वारा संस्था प्रबन्धक द्वारा प्रेषित की जायेगी। निर्धारित तिथि पर चयन समिति द्वारा तदनुसार साक्षात्कार लिया जायेगा। चयन</p>
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		<p>साक्षात्कार के लिए बुलाये जायें चयन करने के कम से कम 10 दिन पूर्व चयन का दिनांक, समय और स्थान की सूचना रजिस्टर्ड डाक द्वारा देगा। चयन समिति तदनुसार साक्षात्कार करायेगी। चयन समिति लिखित परीक्षा तथा साक्षात्कार में प्राप्त अंकों के आधार पर संस्था प्रधान एवं शिक्षक का चयन करेगी। यदि किसी अपरिहार्य कारणवश धारा-16 चच की उपधारा (1) के परन्तुक के खण्ड (क) के अधीन प्रबन्ध समिति द्वारा चयन किया गया विशेषज्ञ निर्धारित दिनांक को चयन में उपस्थित न हो सके तो चयन समिति की बैठक स्थगित कर दी जायेगी।</p>	<p>उपरान्त नियुक्ति की जायेगी। संस्था प्रधान एवं प्रवक्ता पद के प्रत्येक पद के लिए साक्षात्कार के लिए बुलाये जाने वाले अभ्यर्थियों को जो साक्षात्कार के लिए बुलाये जायें चयन करने के कम से कम 10 दिन पूर्व चयन का दिनांक, समय और स्थान की सूचना रजिस्टर्ड डाक द्वारा देगा। चयन समिति तदनुसार साक्षात्कार करायेगी। चयन समिति लिखित परीक्षा तथा साक्षात्कार में प्राप्त अंकों के आधार पर संस्था प्रधान एवं शिक्षक का चयन करेगी। यदि किसी अपरिहार्य कारणवश धारा-16 चच की उपधारा (1) के परन्तुक के खण्ड (क) के अधीन प्रबन्ध समिति द्वारा चयन किया गया विशेषज्ञ निर्धारित दिनांक को चयन में उपस्थित न हो सके तो चयन समिति की बैठक स्थगित कर दी जायेगी।</p>	<p>समिति स्क्रीनिंग / लिखित परीक्षा तथा साक्षात्कार में प्राप्त अंकों के योग से श्रेष्ठता के आधार पर संस्था प्रधान एवं शिक्षक का चयन करेगी। यदि किसी अपरिहार्य कारणवश धारा-16 चच की उपधारा(1) के परन्तुक के खण्ड (क) के अधीन प्रबन्ध समिति द्वारा चयन किया गया विशेषज्ञ निर्धारित तिथि को चयन समिति की बैठक में उपस्थित न हो सके तो चयन समिति की बैठक स्थगित कर दी जायेगी।</p>	<p>समिति स्क्रीनिंग / लिखित परीक्षा एवं साक्षात्कार में प्राप्त अंकों को जोड़कर संस्था प्रधान एवं शिक्षक का चयन करेगी। यदि किसी अपरिहार्य कारणवश धारा-16 चच की उपधारा (1) के परन्तुक के खण्ड (क) के अधीन प्रबन्ध समिति द्वारा चयन किया गया विशेषज्ञ निर्धारित तिथि को चयन समिति की बैठक में उपस्थित न हो सके तो चयन समिति की बैठक स्थगित कर दी जायेगी।</p>
		<p>(ड) विनियम 10 के खण्ड (ड) और (च) के और विनियम 11, 12 तथा 16 के उपबन्ध आवश्यक परिवर्तन सहित, इस विनियम के अधीन किये गये चयन पर लागू होंगे।</p>	<p>(ड) विनियम 10 के खण्ड (ड) और (च) के और विनियम 11, 12 तथा 16 के उपबन्ध आवश्यक परिवर्तन सहित, इस विनियम के अधीन किये गये चयन पर लागू होंगे।</p>	<p>(ड) विनियम 10 के खण्ड (ड) और (च) के और विनियम 11, 12 तथा 16 के उपबन्ध आवश्यक परिवर्तन सहित, इस विनियम के अधीन किये गये चयन पर लागू होंगे।</p>	<p>(ड) विनियम 10 के खण्ड (ड) और (च) के और विनियम 11,12 तथा 16 के उपबन्ध संशोधन सहित ,इस विनियम के अधीन किये गये चयन पर लागू होंगे।</p>
		<p>(च) प्रत्येक सम्भाग के लिए निदेशक द्वारा विशेषज्ञों की एक-एक नामिका जिसमें विनियम 14 में निर्दिष्ट प्रवर्ग (क) से चुने गये 15 या अधिक व्यक्ति होंगे, तैयार की जायेगी और उसे सम्बद्ध सम्भागीय उप शिक्षा</p>	<p>(च) प्रत्येक सम्भाग के लिए निदेशक द्वारा विशेषज्ञों की एक-एक नामिका जिसमें विनियम 14 में निर्दिष्ट प्रवर्ग (क) से चुने गये 15 या अधिक व्यक्ति होंगे, तैयार की जायेगी और उसे सम्बद्ध सम्भागीय संयुक्त</p>	<p>(च) प्रत्येक मण्डल के लिए निदेशक द्वारा विशेषज्ञों की एक-एक नामिका (पैनल) जिसमें विनियम 14 में निर्दिष्ट प्रवर्ग (क) से चुने गये 15 या अधिक व्यक्ति होंगे, तैयार की जायेगी और उसे सम्बन्धित मण्डलीय संयुक्त</p>	<p>(च) प्रत्येक मण्डल के लिए निदेशक द्वारा विशेषज्ञों की एक-एक नामिका (पैनल) जिसमें विनियम 14 में निर्दिष्ट प्रवर्ग (क) से चुने गये 15 या अधिक व्यक्ति होंगे, तैयार की जायेगी और उसे सम्बन्धित मण्डलीय संयुक्त</p>

		के प्राप्त होने के दिनांक के छः माह के भीतर, यथास्थिति, सम्भागीय संयुक्त शिक्षा निदेशक या निरीक्षक, उन पर अपना निर्णय देंगे और ऐसा न करने पर अनुमोदन प्रदान कर दिया गया समझा जायेगा।	के प्राप्त होने के दिनांक के छः माह के भीतर, यथास्थिति, सम्भागीय संयुक्त शिक्षा निदेशक या निरीक्षक, उन पर अपना निर्णय देंगे और ऐसा न करने पर अनुमोदन प्रदान कर दिया गया समझा जायेगा।	संयुक्त शिक्षा निदेशक या निरीक्षक, उन पर अपना निर्णय देंगे और ऐसा न करने पर अनुमोदन प्रदान कर दिया गया समझा जायेगा।	दिनांक से दो सप्ताह के भीतर, यथास्थिति, मण्डलीय संयुक्त शिक्षा निदेशक या निरीक्षक, उन पर अपना निर्णय देंगे और ऐसा न करने पर अनुमोदन प्रदान कर दिया गया समझा जायेगा।
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30. The above provisions contain the manner and procedure of selection and appointment of Teachers and Head of institutions, which includes minority institutions also. Section 16-E of Act, 1921 is applicable to all the secondary institutions as they are, though some difference has been made in the procedure prescribed under Section 16-E and 16-F of Act, 1921 by Section 16-FF, in respect of Educational Institutions of minority. Sections 16-E and 16-F of Act, 1921, in brief, say:

- (A) The post of Head of institution and Teachers, which is to be filled in by direct recruitment, shall be intimated to the Inspector.
- (B) The advertisement of the vacancy shall be published, in at least two newspapers having adequate and wide circulation in State, giving details of post, as may be prescribed.
- (C) No person shall be appointed as Head of the Institution or Teacher unless he/she possesses minimum qualification prescribed by Regulations.
- (D) There is an exception i.e. with regard to exemption in qualification. Proviso to Section 16-E (3) of Act, 1921 says that if a person is granted exemption by U.P. Board having regard to his education, experience and other attainments; such a person even if does not possess prescribed qualification, may be appointed. This is an enabling provision and none has a right to claim appointment, if he does not possess minimum qualification by claiming exemption.
- (E) After an advertisement has been made, prospective candidates shall submit applications for appointment to Inspector along with fee, which shall be such, as prescribed.

(F) After receiving all the applications, first process of selection commences at the level of Inspector, who shall award quality point marks to each candidate on the basis of qualifications mentioned in the application and in accordance with the procedure and principles, as prescribed, i.e., provided in the Regulations.

(G) After awarding quality point marks, Inspector shall forward all the applications to the Committee of Management.

(H) Committee of Management shall constitute a Selection Committee; constitution whereof is prescribed in Section 16-F, as under:

(a) Selection Committee of Head of Institution, i.e., Principal, shall consists of:

(i) President or any member of Committee of Management nominated by the Committee by resolution, who shall be the Chairman of Selection Committee.

(ii) A member of Committee of Management, other than nominated above, as member.

(iii) Three experts nominated by Regional Deputy Director of Education from persons not belonging to the District in which the Institution is situated, out of panel of names prepared under this Section. In other words, in respect of every District, a panel of Experts shall be prepared and when Experts are to be nominated, Regional Deputy Director or Education shall select Experts from the panel of Districts, other than the District, in which the Institution, wherein selection is to be made, situate.

(b) For Selection of a Teacher, Selection Committee shall consists of:

(i) President or member of Committee of

Management nominated by the Committee, by resolution, who shall be the Chairman.

(ii) Head of the Institution, i.e., Principal of the Institution shall be a member.

(iii) Three Experts nominated by the Inspector from a Panel of Experts prepared for this purpose but in respect of a District other than the District in which the Institution wherein the selection is to be made, situate.

(c) If there is no Committee of Management, then the Authorized Controller shall substitute the person, referred to as Chairman and member from Committee of Management, above.

(d) For the purpose of preparing Panel of Experts, Director shall prepare a list of every region in the manner prescribed and tenure of such panel, once prepared, shall be three years. It shall be revised once every three years.

(I) The procedure/business, needs to be followed by Selection Committee, shall be such as may be prescribed by Regulations.

(J) Selection Committee after interview shall prepare a list in order of preference, as far as practicable, of three names for each post found by it to be suitable for appointment.

(K) Selection Committee shall communicate its recommendations together with list of candidates prepared in order of preference to Committee of Management.

(L) Committee of Management shall offer appointment, to the candidates in first preference of the selection and on his failure to join the post, to the next one.

(M) If Committee of Management does not agree with the recommendations of Selection Committee, it shall refer the matter together with reasons of such disagreement to Regional Deputy Director of Education where the appointment relates to the post of

Principal and to Inspector if the appointment relates to a Teacher. The decision of Regional Deputy Director or Inspector, as the case may be, shall be final.

(N) Where Selection Committee does not approve any candidate or finds no candidate suitable for appointment, fresh selection shall be held.

(O) The State Government shall have over all power to examine whether an appointment of a Principal of the Institution i.e. Head of the Institution made is in contravention of the provisions of Act, 1921 and after giving opportunity to such person may cancel such appointment and pass consequential order.

(P) In respect of a Teacher, whose appointment is not in accordance with the provisions of Act, 1921, similar power has been conferred upon Director, which shall also be exercised in the same manner as in respect of Head of Institution such power is exercisable by State Government.

(Q) A power of temporary appointment has been conferred without reference to Selection Committee if there is a temporary vacancy caused due to grant of leave for a period not exceeding six months or a substantive vacancy has occurred on account of death, termination or otherwise, during an educational session and procedure for such appointment would be such as prescribed by Regulations.

(M) There is a restriction that such temporary appointment which is made without reference to Selection Committee shall not continue beyond the end of educational session, during which appointment is made, and this restriction has been given overriding effect by non-obstante clause in proviso to Section 16-E(11) of Act, 1921.

31. This is general procedure applicable for selection of a Head of the Institution and Teacher in a secondary education institution. However, a

deviation/distinction has been made to some extent in respect of minority institutions by Section 16-FF of Act, 1921. It provides, where the institution is a minority institution, Selection Committee for appointment of Head of Institution or a Teacher, as the case may be, shall consists of five members, including Chairman, which shall be nominated by Committee of Management. However, out of five members, one of the member shall be an expert, selected by Committee of Management from the panel of experts prepared by Director of Education, if Selection Committee is formed for selection to the post of Head of Institution. In the case of appointment of a Teacher, one of the member of Selection Committee shall be Head of the Institution. The procedure to be followed by Selection Committee under Section 16-FF (1) shall be such as prescribed by Regulations.

32. Section 16-F also provides that any person selected shall not be appointed unless his appointment is approved by Regional Deputy Director of Education where Head of Institution is to be appointed and by Inspector in case of Teacher. In order to check any inaction or lethargy on the part of Regional Deputy Director of Education or Inspector with regard to approval, it is also provided that they shall not withhold approval for selection under Section 16-FF unless the person concerned lacks minimum qualification prescribed. Meaning thereby if the candidate possesses requisite qualification and is otherwise eligible, approval required from Regional Deputy Director of Education and Inspector shall not be withheld. In case no approval is granted by Regional Deputy Director of Education, Management has been given remedy of submitting representation to Director and where such approval is declined by Inspector, representation can be made to Regional Deputy Director of Education and their decision, i.e., decision of Director or Regional Deputy Director of Education, as the case may be, shall be final.

33. Therefore, broad outlines have been given in above provisions. Detailed procedure with regard to qualifications, preparation of panel of

experts, manner in which candidate shall apply and submit fee etc. and the manner of functioning of Selection Committee is required to be provided by Regulations. Such procedure has been prescribed in Chapter-II, Part II-A of the Regulations and in respect of minority institution with reference to Section 16-FF, procedure has been prescribed in Regulation-17, therefore, we directly come to Regulation-17 which is the crux of the dispute in all these writ petitions.

34. First of all, we propose to state in brief, procedure prescribed in Regulation-17 as it was prior to amendment made by G.O. dated 20.03.2018, since that procedure was not found offending by petitioners and has been holding field since long. We shall refer this Regulation as it stood prior to amendment by G.O. dated 20.3.2018 as un-amended existing Regulation. The said regulation before amendment provided as under:

- (A) Manager of the Committee of Management of the institution shall advertise vacancies required to be filled in by direct recruitment in one 'Hindi' and 'English' newspaper having wider circulation in the State.
- (B) Advertisement shall contain details of nature of vacancy, whether temporary or permanent, number of vacancies, other particulars like whether Principal or Head Master, Lecturer or L.T. Grade, C.T. Grade etc.
- (C) Where the vacancy is of a Teacher, subject in which appointment is to be made shall also be mentioned and it shall also mention pay-scale of vacancy, other allowances, requisite experience, minimum qualification, requisite age etc.
- (D) At least two weeks time shall be given from the date of advertisement for submission of application forms. Copy of advertisement shall be forwarded to Inspector also.
- (E) All the applications shall be submitted in the prescribed form as provided by Management giving all details and also appending

copies of requisite certificates, testimonials, recommendation letters etc. Management may charge requisite fee for Application Form in prescribed proforma to the candidate.

(F) If the candidate is already working in any institution and apply, such Institution where he is working shall not withhold his application but forward to concerned authority forthwith.

(G) Details of all applications in serial numbers shall be entered in the register with details of candidates for respective posts etc.

(H) For every vacancy, at least 7 candidates shall be called for interview if such minimum number of candidates have applied. Intimation, date of interview shall be communicated at least 10 days before date of interview.

(I) If experts are not present or could not attend meeting of Selection Committee for any reason, Selection Committee's meeting shall be postponed.

35. This procedure under Regulation 17(क) i.e. 17(A) in respect of Minority Institutions has undergone amendments by four G.Os. dated 20.03.2018, 06.11.2018, 18.04.2019 and 12.08.2019. We find that broadly Regulation 17(A) with regard to advertisement of vacancies is maintained except that by last amendment, it has also been provided that option for submission of applications on-line shall also be given. Therefore, we are not repeating the same.

36. Similarly, Regulation 17(ख) i.e. 17(B) also has no material change except that it also includes the application forms received on-line and there is no material difference.

37. Regulation 17(ग) i.e. 17(C) with regard to restriction on the authority of an employer for not withholding application of a prospective candidate for employment in another Institution is also same.

38. Now the difference comes from Regulation 17(घ) i.e. 17(D). By Government order dated 20.03.2018 Regulation 17-D was materially altered and thereafter some Clauses-(ङ), (च) and (छ) i.e. (E), (F) & (G),

respectively were also inserted. We, therefore, propose to refer Regulation 17-D and subsequent inserted Clauses (E), (F) & (G) in the aforesaid G.Os. one by one.

39. **Government Order dated 20.03.2018** says that details of application shall be registered serially in Register as it was earlier. Thereafter, the entire information in application forms shall be forwarded to the Regional Joint Director of Education, if the selection is to be made for the post of Headmaster of Institution and to the Regional Joint Director of Education and Inspector if it is to be made for teachers. Thereafter, the said educational authorities shall arrange written test (screening test) through prescribed private agency.

40. Thereafter further process has been altered. It provides that concerned Institution shall hold a written test, i.e., screening test comprising of 90 marks and 10 marks shall be kept for interview. The aforesaid screening test shall be held if the selection is to be made for the post of Head of Institution or Lecturer but where selection is to be made for Assistant Teacher there shall be no interview and screening test shall comprise of written test of 100 marks. In aforesaid screening test as per available vacancies on the basis of merit a panel of five candidates for each vacancy shall be prepared. Aforesaid panel shall be forwarded by the prescribed Recruitment Agency to the Joint Director of Education if it pertains to Head of Institution or Inspector if it pertains to teachers. Regional Joint Director of Education or Inspector, as the case may be, shall forward the aforesaid panel to the Manager of Committee of Management of Institution with purpose of verification of testimonials of selected candidates and thereafter to place it before Selection Committee. The Selection Committee then shall conduct selection by holding interview of 10 marks only. Candidates selected by Selection Committee on the basis of interview and the marks obtained in written test shall be prepared on the basis of merit and forwarded to educational authorities for their approval. Information of interview shall be given at least 10 days

before through registered post and rest of provisions are similar as they were earlier.

41. In the **Government Orders dated 06.11.2018, 18.04.2019 and 12.08.2019**, there is no substantial difference but changes made by G.O. dated 12.08.2019 are the recent one, which is operating, hence, we refer here therefrom for brevity. It says that applications shall be submitted by candidates to private Recruitment Agency who shall make entry in register, prepare details, hold screening test and thereafter those candidates who are selected in written test, a merit list of five candidates per vacancy shall be prepared and forwarded for further selection by Selection Committee constituted under Section 16-FF for Minority Institutions.

42. Difference between Regulation 17, as it stood originally, is that it did not provide for any written test/screening test but contemplated only interview and entire matter of selection was within the purview of Selection Committee under Section 16-FF (1). Selection Committee has been maintained but with an introduction of a screening test. Earlier selection process is no more applicable. Now a Private Recruitment Agency has been introduced for the purpose of holding screening written test of 90 marks. It is only those candidates who are selected in such screening test, their list of five candidates per vacancy shall be prepared by Private Recruitment Agency. Scope of selection by Selection Committee is limited to those candidates and marks of interview are also reduced to 10 marks only.

43. According to counsel for petitioners these directions and restrictions caused by impugned G.Os. by introducing firstly Private Recruitment Agency; secondly introducing screening test/written test of 90 marks and thirdly by reducing the weight of interview which earlier gave wider subjective authority of assessment to Selection Committee of Minority Institution but now has been marginalized, only to the extent of 10 per cent, and has affected their right of establishment and

administration of Minority Institutions, therefore amendment of Regulation 17 to this extent is ultra vires of Article 30 of the Constitution.

44. During course of arguments, it is stated that insertion of Clauses-(E), (F) and (G), is consequential which became necessary due to insertion of Private Recruitment Agency and introduction of written test/screening test in Clause-D, and hence, individually aforesaid provisions have not been addressed but it is said that since the amendment made in Regulation 17-D to this extent is bad, therefore, all consequential amendments and provisions inserted are also bad and illegal.

45. Counsel for parties individually and collectively have cited plethora of judgments and same are as follows, **Rev. Sidhajibhai Sabhai and others Vs. State of Bombay and another AIR 1963 SC 540; Jadunath Singh Vs. State of U.P. AIR 1971 SC 363; Ahmedabad St. Xavier's College Society Vs. State of Gujarat, AIR 1974 SC 1389; All Saints High School v. Govt. of A.P. AIR 1980 SC 1042; N. Ammad Vs. Manager, Emjay High School and others, AIR 1999 SC 50; TMA Pai Foundation Vs. State of Kerala, AIR 2003 SC 356; Brahmo Samaj Education Society Vs. State of West Bengal and others AIR 2004 SC 3358; P.A. Inamdar Vs. State of Maharashtra, AIR 2005 SC 3799; Secretary Malankara Syrian Catholic College Vs. T. Jose, AIR 2007 SC 570 and Sindhi Education Society and another Vs. Chief Secretary, Government of NCT of Delhi and others, 2010 (8) SCC 49.**

46. All the judgments cited are well known on various issues of minority institutions but actual issue which has come up for consideration before this Court is, “what is the power of state in making provisions for enhancement of transparency, efficiency and standard of imparting education to the students in the matter of making selection and appointment of teachers without interfering in substantial way with the authority of management to choose and select teachers of its own choice and particularly, when minority institution in question is one which is receiving aid from Government Exchequer and public funds are being

utilized for all its expenses”.

47. In this respect, counsel for parties have heavily relied on Supreme Court's judgment in **N. Ammad Vs. Manager, Emjay High School and others (Supra)**. A two Judge Bench of Supreme Court considered the question “is the Management of a minority School free to choose and appoint any qualified person as Headmaster of the School or whether such Management is hedged by any legislative edict or executive fiat in doing so”. Therein Emjay Vocational Higher Secondary School, Valliappalli Taluk, Calicut District, Kerala was a minority institution. Management sought to appoint one P.M. Aboobacker as Head Master of the institution. N. Ammad resisted the act of Management on the ground that he is senior most teacher in the School and should be appointed as Headmaster. The claim of N. Ammad was supported by District Education Officer but the Management did not succumb. N. Ammad then filed a writ petition in Kerala High Court seeking direction to Management to appoint him as Headmaster. A Single Judge of Kerala High Court allowed writ petition and issued direction as claimed by N. Ammad. However, in appeal Division Bench reversed the judgment and dismissed the writ petition. That is how N. Ammad came in appeal to Supreme Court. While examining the facts, Supreme Court found that N. Ammad was appointed as Teacher on 03.06.1982. Post of Headmaster fell vacant in June, 1991 and N. Ammad was senior most teacher but not found qualified to be appointed as Headmaster. Under Rules, 12 years continuous graduate service was the minimum qualification for appointment to the post of Headmaster. N. Ammad had not completed 12 years in June, 1991. However, he was put In-charge Headmaster with the approval of District Education Officer. After completing required length of service in June, 1994, N. Ammad pressed his claim before Management to appoint him as regular Headmaster. Recommendation was also made by District Education Officer asking Management to permit and appoint senior most qualified teacher as Headmaster. Management, however, appointed Sri

P.M. Aboobacker as Headmaster, who was a graduate teacher having longer period of service than N. Ammad in another school. A contention was raised that statutory provisions were binding, which required that appointment of Headmaster shall ordinarily be according to seniority since institution was declared minority by Government on 02.08.1994. This contention was rejected holding that Article 30 of Constitution contemplates a minority institution, which is established and administered by the Management. Supreme Court said that institution was a minority institution having been established and administered by minority community and only recognition of this fact by declaration made by Government on 02.08.1994 but it will not deprive minority character of the institution it enjoyed earlier. Declaration is only an open acceptance of a legal character which should necessarily have existed antecedent to such declaration. Then Court considered the effect of Rule 44(1) of Kerala Education Act, 1958, which provided appointment of Senior most teacher as Head Master. Court relied on seven-Judges judgment in- **in Re Kerala Education Bill 1957 AIR 1958 SC 956**, wherein one of the proposition was, *“The right guaranteed under Article 30(1) is a right that is absolute and any law or executive direction which infringes the substance of the right is void to the extent of infringement. But the absolute character of the right will not preclude making of regulations in the true interests of efficiency or instruction, discipline, health, sanitation, morality, public order and the like as such regulations are not restrictions on the substance of the right guaranteed by the Constitution.”*

48. Court also observed that the aforesaid proposition was approved by another Constitution Bench in **Sidhrajibhai Sabbai and others (supra)** and a nine-Judges Bench of Supreme Court in **Ahmedabad St. Xaviers College Society and another (Supra)**. In the backdrop of aforesaid exposition of law, Court observed that selection and appointment of Headmaster in a School is of prime importance in administration of that educational institution. Headmaster is the key post in running of school.

He is the hub on which all the spokes of the school are set around whom they rotate to generate result. A school is personified through its Headmaster and he is the focal point on which outsiders look at the school. A bad Headmaster can spoil the entire institution, an efficient and honest Headmaster can improve it by leaps and bounds. The functional efficacy of a school very much depends upon the efficiency and dedication of its Headmaster. Court also referred to the observations made by nine-Judge Bench of Supreme Court in **Ahmedabad St. Xavier's College Society and another (Supra)** with regard to importance of role of Principal of a college wherein Hon'ble K.K. Mathew, J. expressing his view in support of majority, said, *"It is upon the principal and teachers of a college that the tone and temper of an educational institution depend. On them would depend its reputation, the maintenance of discipline and its efficiency in teaching. The right to choose the principal and to have the teaching conducted by teachers appointed by the management after an overall assessment of their outlook and philosophy is perhaps the most important facet of the right to administer an educational institution."*

49. Justice H.R. Khanna, has expressed a border view that even selection of teachers is of great importance in the right to manage a school. His Lordship said, *"The selection and appointment of teachers for an educational institution is one of the essential ingredients of the right to manage an educational institution and the minorities can plainly be not denied such right of selection and appointment without infringing Article 30(1)".*

50. In this background Court said that considering importance of Teachers and Principal of College vis-a-vis Administration of institution, if Management is not given very wide freedom to choose the personnel for holding such a key post, subject, of course, to the restrictions regarding qualifications to be prescribed by the State, the right to administer the school would get much diminished. In paragraph-26 of the

judgment, Court said:

“The management of a minority school is free to find out a qualified person either from the staff of the same school or from outside to fill up the vacancy.”

51. Argument was raised on behalf of N. Ammad that if Management is anxious to find out most qualified person, post should have been advertised inviting applications from qualified persons and for this purpose two-Judges judgment of Supreme Court in **Shainda Hasan Vs. State of Uttar Pradesh and others (1990) 3 SCC 48** was relied but Court held that no legal proposition has been laid down therein that selection process must be through advertisement. Court said:

“According to us, it is for the management of the minority educational institution to choose the modality for selecting the qualified persons for appointment.”

52. Consequently, Court answered the question formulated above, holding in para-28, as under:

“28. Thus the management's right to choose a qualified person as the Headmaster of the school is well insulated by the protective cover of Article 30(1) of the Constitution and it cannot be chiselled out through any legislative act or executive rule except for fixing up the qualifications and conditions of service for the post. Any such statutory or executive fiat would be violative of the fundamental right enshrined in the aforesaid Article and would hence be void.”

53. We intended to consider other cases also in detail but fortunately all these authorities and many others have been considered very recently by Supreme Court in **Sk. Md. Rafique Vs. Managing Committee, Contai Rahamania High Madrasah and others (Civil Appeal No. 5808 of 2017)** and other connected matters decided on 06.01.2020, and virtually same question as is up for consideration before us, has been considered therein by Supreme Court, hence it would be appropriate for this Court not to burden this judgment by referring earlier judgments of Supreme

Court instead we find it appropriate to refer recent authority in **Sk. Md. Rafique (Supra)**. Therein validity of Sections 8, 10, 11 and 12 of West Bengal Madrasah Service Commission Act, 2008 (hereinafter referred to as “WBMSC Act, 2008”) was challenged as ultra vires of Article 30 of Constitution of India. It is contended that these provisions deprive right of selection and appointment of teachers of own choice by Management of Minority Institution and, therefore, violative of Article 30 of Constitution of India. There was a Statute namely West Bengal Board of Madrasah Education Act, 1994 (hereinafter referred to as “WBBME Act, 1994”). It was enacted to establish a Board of Madrasah Education in West Bengal to proceed for matter connected therewith and incidental therewith. There was another Statute namely West Bengal Minorities Commission Act, 1996 (hereinafter referred to as “W BMC Act, 1996”) to establish Minority Commission to study and suggest additional social, economic, educational and cultural requirements of religious and linguistic minorities of West Bengal with a view to equipping them to preserve secular traditions of West Bengal and to promote national integrity. A third Statute namely West Bengal School Service Commission Act, 1997 (hereinafter referred to as “WBSSC Act, 1997”) was enacted to provide for constitution of Regional School Service Commissions and a Central School Service Commission in the State and for matters connected therewith and incidental thereto. With respect to applicability of WBSSC Act, 1997 to Minority Institutions, Section 15 thereof reads as under :

“15. Act not to apply in relation to certain schools:-

The provisions of this Act shall not apply to-

(a) a school established and administered by a minority, whether based on religion or language, or

(b) a school under any trust, established and administered by a minority, whether based on religion or language, or ...
..... ”

54. By notification dated 12.10.2007, Government of West Bengal, Minorities Development and Welfare and Madrasah Education

Department declared and granted to all recognised and aided Madrasahs under the control of the Government the status of “Minority Educational Institutions”. The aforesaid Notification reads as under:-

*“Government of West Bengal
Minorities Development & Welfare & Madrasah
Education Department
Writers’ Buildings, Kolkata – 700001
No.1465-MD/07 Dated: 12.10.07*

NOTIFICATION

WHEREAS Muslim recognised as Minority Community in the State of West Bengal and minorities have the right under Article 30 of the Constitution of India to establish and administer educational institution of their choice;

AND WHEREAS the State Government is competent to declare a particular institution as a minority institution and till such time the government issue an order declaring that it is a minority institution they can not operate as Minority Institutions;

AND WHEREAS the Supreme Court has held that the Government are the Competent Authority to verify and determine the minority status of an Educational Institution for the purpose of Article 30(1) of the Constitution of India;

AND WEHREAS the Govt. recognised Madrasahs including Hooghly Govt. Madrasah and the Calcutta Madrasah were originally established by the Muslim minority and continuously administered by the members of that minority to subserve and promote the interests of the minority community concerned;

AND WEHREAS the abovesaid Madrasahs were, in course of times, recognised alongwith liabilities by the Government for promoting educational interests of the Muslim minority and on verification it has been ascertained that more than 90% students are pursuing their studies in these institutions and these Madrasahs are functioning under supervision of the W.B. Madrasah Board constituted with member representatives of the Minority Community concerned.

AND WHEREAS the State Govt. having been satisfied about the above antecedents of all the recognised Madrasahs which are aided and guided by the Government prescribed guidelines relating to admissions, selections etc. and about their continuing and sustained functioning for promoting the interests of the concerned minority have become satisfied that these institutions are fit to enjoy minority status of an Educational Institution for the purpose of Article 30(1) of the Constitution of India.

AND WHEREAS the Govt. in the State of West Bengal have also considered expedients to declare these recognized and aided Madrasahs and those which will be so recognised and aided as such in future as Minority Educational Institution.

NOW, THEREFORE, in accordance with the above considerations and in pursuance of the Article 30 of the Constitution of India the Government is pleased, hereby, to declare that all the recognised and aided Madrasahs under control of this Government and those Madrasahs which will be recognised on similar lines in future, as Minority Educational Institutions. These institutions will also be allowed, in consequence to have the following effects as agreed upon by the State Government.

i) They will continue to get financial assistance as before from the State Government

ii) Reservation policy for employment etc. shall not apply in case of appointment of teachers and non-teaching staff in these Madrasahs.

iii) Selection of teachers may continue to be done by West Bengal School Service Commission through separate panel.

By order of the Governor (Pawan Agawal) Secretary to the Govt. of West Bengal”

55. Another Government Notification was issued on 28.12.2007 by the same department of Government of West Bengal stating that after being conferred minority status upon all recognized and aided Madrasahs, the matter of selection of teachers for recognized and aided Madrasahs of West Bengal has gone out of the purview of the existing WBSSC

Act, 1997. Thereafter separate body for recommending panel of teachers for appointment in Recognized Non-Government Aided Madrasahs was felt necessary and hence Madrasah Service Commission was proposed to be constituted and this resulted in enactment of WBMSC Act, 2008.

56. We straightway come to Sections 8, 10, 11 and 12 of the WBMSC Act, 2008 validity whereof was challenged before Supreme Court. The same read as under:

“8. Notwithstanding anything contained in any other law for the time being in force or in any contract, custom or usage to the contrary, it shall be the duty of the Commission to select and recommend persons to be appointed to the vacant posts of teachers in accordance with the provisions of this Act and the rules made thereunder.”

“10. Notwithstanding anything contained in any other law for the time being in force or any contract, custom or usage to the contrary, the Managing Committee, the ad hoc Committee or the Administrator, as the case may be, shall be bound to appoint the candidate recommended by the Commission to the post of teacher in the Madrasah concerned as per vacancy report.

Provided that in the absence of the Managing Committee, ad hoc Committee or the Administrator, the Head Master or the Headmistress or the Teacher- In-charge is empowered to issue appointment letter to the candidate recommended by the Commission. Such matter should be ratified at the next available meeting of the Managing Committee, ad hoc Committee or by the Administrator, as the case may be:

Provided further that the Managing Committee, ad hoc Committee, the Administrator or the Headmaster or the Headmistress or the Teacher-in-charge as the case may be, shall, if any error is detected in the recommendation, immediately bring it to the notice of the Commission for removal of such error.

“11. Any appointment of a teacher made on or after the commencement of this Act in contravention of the provision of this Act shall be invalid and shall have no effect and teacher so appointed shall not be a teacher within the meaning of clause (s) of Section 2.”

“12 (i) If the Managing Committee, the ad hoc Committee or the Administrator of a Madrasah, as the case may be, refuses, fails or delays to issue appointment letter to the candidate recommended by the Commission within the period stipulated in the letter of recommendation by the Commission, without any reasonable ground, the State Government may direct the Board to dissolve the Managing Committee or the ad hoc Committee, or discharge the Administrator, as the case may be, or stop all financial assistance to such Madrasah recording reasons thereof and may also issue direction upon the

Board or Council, as the case be, to withdraw recognition or affiliation of such Madrasah.

(ii) In case of failure to issue appointment letter to the candidate recommended by the Commission is on the part of the Superintendent, the Headmaster, the Headmistress or the Teacher-in-charge of a Madrasah, he shall be subject to such disciplinary proceedings as may be prescribed.”

57. An amendment was made in the aforesaid Act, 2008 by West Bengal Madrasah Service Commission (Amendment) Act, 2010 by inserting certain words in Section 8 so as to cover recommendations of transfer including model transfer of teachers and non-teaching staff of Madrasah Service Commission. In exercise of power conferred by Act, 2008, Rules were also framed by West Bengal Madrasah Service Commission Recruitment (Selection and Recommendation of Persons For Appointment and Transfer to the Posts of Teaching and Non-teaching Staff) Rules, 2010 (hereinafter referred to as “WBMSCR, Rules, 2010”). Chapter-III of WBMSCR Rules, 2010 deals with “Scope, Method and Manner of Selection” and Rule 8, which is relevant, reads as under:

“8. Manner of selection – (1) Selection to any post shall be made on the basis of results of the State/Region/Area Level Selection Test, as may be decided by the Commission, which may comprise any, some or all of the following (as the case may be) –

a) Written Examination

b) Evaluation of Qualification

c) Personality Test

d) Aptitude Test of the candidates, as the case may be, in the manner as specified in Schedule III (2) The Commission may, in its discretion, fix the minimum qualifying marks to be scored/obtained by the candidates in written examination or in aggregate or in both and relax the qualifying marks on reasonable ground(s) to be recorded in writing”

58. The validity of aforesaid Act, 2008, and in particular Sections 8, 10, 11 and 12 etc. was challenged on the ground that Managing Committee or the Administrator of minority institution would be bound to appoint the candidates recommended by the Madrasah Service Commission and

otherwise, the consequence would be recommendation for penalty and this violates the right to establish and administer an institution of their own choice conferred upon the Educational Minority and violative of Article 30 of the Constitution of India.

59. The writ petitions were opposed by West Bengal Government contending that the Commission would only select and recommend teachers and non-teaching staff of Madrasahs but appointment yet to be made by Managing committee of minority institutions; that they would exercise overall control in respect of such staffs which are not taken away. There is no difference in day to day administration of Madrasahs; these Madrasahs are expected to employ good quality teachers for imparting quality education to the students and the entire legislation is to provide qualified superior faculty to impart good quality of education to the students.

60. Learned Single Judge upheld the submissions of the learned counsel for writ petitioners and found provisions, ultra vires. He allowed writ petitions vide judgment dated 12.3.2014 whereagainst candidates selected and recommended by Minority Commission for appointment and others filed Letters Patent Appeals, which were also dismissed by a Division Bench vide judgment dated 09.12.2015 and thereafter matter came to Supreme Court. The basic issue which came up for consideration before Supreme Court, as formulated in paragraph-16, reads as under:

(1) Whether the provisions, namely, Sections 8, 10, 11 and 12 of the Commission Act are ultra vires as held by the High Court?

(2) Whether these provisions transgress the right of minority institutions guaranteed under the Constitution of India?

61. Thereafter Supreme Court has considered the entire authorities on the subject starting from Kerala Education Bill, 1957 and has recorded its conclusions running from Para-38 to 59 of judgment. It refers to the observations made in **Sidhajbhai Sabhai (Supra)** and said that it is difficult to appreciate how the Government can be prevented from

framing Regulations that are in the national interest, as it seems to be indicated in the passage quoted in earlier paragraphs of judgment. Any regulation framed in the national interest must necessarily apply to all educational institutions, whether run by majority or minority. Such a limitation must necessarily be read into Article 30. The right under Article 30(1) cannot be such as to override the national interest or to prevent Government from framing regulations in that behalf. It is, of course, true that government regulations cannot destroy the minority character of institution or make the right to establish and administer a mere illusion; but the right under Article 30 is not so absolute so as to be above the law. Supreme Court recognized that right to establish and administer comprised of (a) right to admit students (b) right to appoint staff- teaching and non-teaching staff, and (c) right to have disciplinary action against staff. Having said so, it further observed that question is, “to what extent right of aided primary minority institution to administer be regulated” and it is this aspect which need be considered for the reason that a minority institution, which is getting aid from the State cannot claim right to complete absoluteness without any restriction or check, which is in the interest of Nation as a whole and student community in particular.

62. Thereafter Supreme Court noted the essence of various authorities, it considered and then in paragraphs 49 to 53 said as under:

“49. Thus, if the intent is to achieve excellence in education, would it be enough if the concerned educational institutions were to employ teachers with minimum requisite qualifications in the name of exercise of Right Under Article 30 of the Constitution, while better qualified teachers are available to impart education in the second category of institutions as stated hereinabove. For example, if the qualifying percentile index for a teacher to be appointed in an educational institution, considering his educational qualifications, experience and research, is required to be 50, and if teachers possessing qualifications far greater and higher than this basic

index are available, will it be proper exercise for a minority educational institution to select teachers with lower index disregarding those who are better qualified? Will that subserve pursuit of excellence in education? One can understand if under the regulatory regime candidates who are otherwise less qualified are being nominated in the minority educational institution and the minority educational institution is forced to accept such less meritorious candidates in preference to better qualified candidates. In such cases, the minority educational institution can certainly be within its rights to agitate the issue and claim a right to choose better teachers. But if the candidates who are selected and nominated under the regulatory regime to impart education which is purely secular in character, are better qualified, would the minority institution be within its rights to reject such nomination only in the name of exercise of a right of choice? The choice so exercised would not be in pursuit of excellence. Can such choice then be accepted?

If the right is taken to be absolute and unqualified, then certainly such choice must be recognised and accepted. But, if the right has not been accepted to be absolute and unqualified and the national interest must always permeate and apply, the excellence and merit must be the governing criteria. Any departure from the concept of merit and excellence would not make a minority educational institution an effective vehicle to achieve what has been contemplated in various decisions of this Court. Further, if merit is not the sole and governing criteria, the minority institutions may lag behind the non-minority institutions rather than keep in step with them.

Going back to the example given above, as against index of 50 i.e. the minimum qualifying index, if a candidate nominated under the regulatory regime is at an index of 85, selection by a

minority educational institution of a candidate at an index 55 may certainly be above the minimum qualifying mark, but in preference to the one at the index of 85 who is otherwise available, the appointment of a person at the index level of 55, will never give the requisite impetus to achieve excellence. A meritorious candidate at the index level of 85 in the above example, if given the requisite posting will not only help in upholding the principle of merit but will in turn generate an atmosphere of qualitative progress and sense of achievement commensurate with societal objectives and ideology and such posting will, therefore, be in true national interest.

50. 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.

51. With these basic principles in mind, we may now consider the statutory provisions under which the teachers could be nominated under the Commission Act and see whether the concerned Regulations help in achieving excellence or whether those provisions are violative of the Rights of the minority institutions.

52. In terms of Section 4 of the Commission Act, the Commission is to consist of a Chairman and four Members. The Chairman of the Commission has to be an eminent educationist having profound knowledge in Islamic Culture and must be well versed in education with teaching experience inter alia as a teacher of a University or

as a Principal of a college, for a period of not less than twelve years. It is true that the latter part of Section 4(ii) speaks of an officer of the State Government not below the rank of Joint Secretary who could also be appointed as the Chairman of the Commission. But in our view, considering the nature of duties that the Chairman is to discharge, even an officer of the State Government has to be a person with profound knowledge in Islamic Culture. Apart from the Chairman, there are four Members who are to be appointed in terms of Section 4(iii) of the Commission Act. Out of these four Members, one has to be an eminent educationist having profound knowledge in Islamic Theology and Culture, while the other two Members must have teaching experience inter alia as a teacher of a University, or a Principal of a College for a period of not less than ten years. The fourth member could be a non-educationist, but he must have held the position of eminence in public life or in Legal or Administrative Service. Predominant composition of the Commission is thus of educationists and two of them have to be persons with profound knowledge in Islamic Culture and Islamic Theology. The provisions of the Commission Act are thus specially designed for Madrasahs and Madrasah Education System in the State. Rule 8 of the 2010 Rules stipulates fair and transparent process of merit based selection and the statutory mechanism would ensure that only those teachers would be selected who would be best suited to impart education in Madrasah Education System. The State Legislature has taken care to see that the composition of the Commission would ensure compatibility of the teachers who would be selected to impart education in Madrasah Education System, which is also emphasized in the Statement of Objects and Reasons.

53. *It is true that the recommendations or nominations of teachers made by the Commission are otherwise binding on the*

Managing Committees of concerned Madrasahs, but, in terms of second proviso to Section 10 of the Commission Act, if there be any error, it is open to the Managing Committee of the concerned Madrasah to bring it to the notice of the Commission for removal of such error. The concept of 'error' as contemplated must also include cases where the concerned Madrasah could appoint a better qualified teacher than the one nominated by the Commission. If any such error is pointed out, the Commission will certainly have to rectify and remove the error. The further protection is afforded by Section 12 of the Commission Act, under which the concerned Madrasah could be within its rights to refuse to issue appointment letter to the candidate recommended by the Commission if any better qualified candidate is otherwise available with the managing committee of the concerned Madrasah. Such refusal may also come within the expression 'any reasonable ground' as contemplated in Section 12(i) of the Act.

The legislature has thus taken due care that the interest of a minority institution will always be taken care of by ensuring that i) in normal circumstances, the best qualified and suitable candidates will be nominated by the Commission; ii) and in case there be any error on part of the Commission, the concerned Managing Committee could not only point out the error which would then be rectified by the Commission but the Managing Committee may also be within its rights in terms of Section 12(i) to refuse the nomination on a reasonable ground.”

63. Supreme Court allowed the appeals upholding statutory provisions and set aside the judgments of the High Court as is evident from paragraph-57 of the judgment, which reads as under:

“57. In the premises, while allowing these appeals, we set aside the view taken by the Single Judge and the Division Bench of the High Court and dismiss Writ Petition No.20650(W) of 2013 and other

connected matters. We also hold Sections 8, 10, 11 and 12 of the Commission Act to be valid and constitutional.”

64. In the present case also, we find that statutory provisions made by the respondent-authorities are even less regulatory than the same were in the case of West Bengal. Here only an element of open test in the form of written test has been introduced, which will determine merit of the candidates. Further scope of subjective element of selection, when the selection was made only on the basis of interview, has been curtailed to a larger extent. This is for bringing in transparency, impartiality, fairness and non arbitrariness in selection and it is in the interest of public at large, students' community and national interest. In selection and appointment no Government Authority has any direct role except that it has to forward papers from one to another. Even for recruitment i.e. holding of Screening/Written Test, no Government Machinery has been given any power of interference but a private recruitment agency has to be employed. Its role is limited as it is only a written examination conducting body and has to prepare merit list on the basis of marks secured in written test and same to forward through educational authorities to the Management for holding selection in accordance with the statute. It is not in dispute that all the educational institution before this Court are 100 percent Government aided minority educational institutions and therefore, in view of aforesaid law laid down by Supreme Court, it cannot be said that statutory provision in question, in any manner, affects their right to administer minority institution and it cannot be said to be violative of Article 30 of the Constitution. We, therefore, find no merit in these writ petitions.

65. Dismissed accordingly.

66. However, there shall be no order as to costs.

Order Date :- 22.04.2020

Prajapati