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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 17th July, 2026.

+ W.P.(C) 11919/2023 & CM APPL. 46601/2023

BAPTIST UNION OF NORTH INDIA (REGD.) AND ANR.

.....Petitioners

Through: Mr. Romy Chacko, Sr. Advocate with
Mr. Sachin Singh Dalal and Mr.
Akshat Singh, Advocates.

versus

DIRECTOR OF EDUCATION AND ORS.

.....Respondents

Through: Mr. Yeeshu Jain, ASC with Ms. Jyoti
Tyagi and Mr. Sachin Garg,
Advocates for R-1 to R-3.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. Petitioner No. 1 is a registered society which manages Petitioner No. 2, Francis Girls Senior Secondary School. The School was established in the year 1886 and is a recognised aided minority educational institution. By the present petition, the Petitioners assail the communications dated 22nd September, 2022 and 14th June, 2023 issued by the Directorate of Education, whereby their request to undertake direct recruitment against vacant teaching and non-teaching posts was not granted.

2. The grievance of the Petitioners does not concern the creation of additional posts. It concerns the continued refusal of the Directorate of



Education to permit recruitment against vacancies stated to exist within the sanctioned aided strength of the School.

3. The record shows that the School first submitted its proposal for filling the vacant posts on 4th October, 2017. The proposal was thereafter revised from time to time at the instance of the Directorate, including for updating the post-fixation statement and the applicable roster. The School claims to have removed the deficiencies pointed out by the Directorate and resubmitted its proposal on 23rd May, 2018, 12th February, 2019 and, finally, on 4th March, 2022.

4. It is the Petitioners' case that the vacancies have continued to increase with the passage of time. It is stated that the School is presently functioning with only one Post Graduate Teacher, three Trained Graduate Teachers, two Laboratory Assistants and one Sweeper as its regular staff. The Petitioners contend that the continued depletion of regular teaching and non-teaching staff has placed the very functioning of the School in jeopardy.

5. By its communication dated 22nd September, 2022, the Directorate informed the School that a proposal to undertake recruitment in aided schools through the Delhi Subordinate Services Selection Board, hereafter "DSSSB", was under consideration. The School was advised that, until the proposal was finalised, its vacant posts could be manned through guest teachers.

6. The School thereafter submitted a representation dated 15th May, 2023 seeking urgent permission to undertake direct recruitment. By the second impugned communication dated 14th June, 2023, the Directorate declined to grant such permission at that stage. The material portion of the communication reads as follows:



“In this regard it is informed that the Directorate of Education, GNCTD has already proposed recruitment of staff in Government Aided Schools through Delhi Subordinate Services Selection Board, GNCTD and the said proposal is still under consideration of the higher authorities. Hence, till the outcome of the said proposal, no permission can be given to any aided school for undertaking direct recruitment of staff.”

7. The communication further referred to the circular dated 20th January, 2021 and advised the School to submit a proposal for deployment of guest teachers as a temporary measure. The School declined the offer and reiterated its request for permission to undertake regular recruitment by its representation dated 30th June, 2023.

Submissions

8. Mr. Romy Chacko, Senior Counsel appearing for the Petitioners, submits that the existing recruitment mechanism could not have been kept in suspension merely because the Government was contemplating a different mechanism through DSSSB. A proposal under consideration, he submits, neither has the force of law nor can it override the Delhi School Education Act, 1973 and the Delhi School Education Rules, 1973.

9. He further submits that the right of a minority educational institution to select and appoint its teaching and non-teaching staff constitutes an integral part of its right to administer the institution under Article 30(1) of the Constitution. Reliance is placed upon *Ahmedabad St. Xavier's College Society v. State of Gujarat*¹; *T.M.A. Pai Foundation v. State of Karnataka*²; *Secretary, Malankara Syrian Catholic College v. T. Jose &*

¹ (1974) 1 SCC 717.

² (2002) 8 SCC 481.



*Ors.*³; *Queen Mary's School v. Union of India*,⁴; and *Delhi Tamil Education Association v. Director of Education*.⁵

10. Mr. Chacko points out that the appeal preferred by the Directorate against the decision in *Delhi Tamil Education Association* was dismissed by the Division Bench in *Lt. Governor of Delhi v. Delhi Tamil Education Association*.⁶ The Division Bench reiterated the direction permitting recruitment, subject to strict compliance with Rule 96(3) of the Delhi School Education Rules, 1973. The judgment was thereafter carried by the Directorate to the Supreme Court by way of SLP (C) No. 28295/2024, which was dismissed on 6th December, 2024.

11. Without prejudice to the Petitioners' contention concerning the extent of their autonomy under Article 30(1), Mr. Chacko states that the School shall undertake the proposed recruitment strictly in accordance with Rule 96 and the other applicable provisions of the Delhi School Education Rules, 1973. He submits that the School shall constitute the Selection Committees contemplated by the Rules, permit the participation of the nominees of the Directorate and comply with the prescribed qualifications, experience, age, roster and all other regulatory requirements applicable to the respective posts.

12. Ms. Avnish Ahlawat, Standing Counsel appearing for the Respondents, opposes the petition. She submits that the School receives 95 per cent grant-in-aid from the Government and that the Directorate has a

³ (2007) 1 SCC 386.

⁴ 2011 SCC OnLine Del 4884.

⁵ 2024 SCC OnLine Del 4158.

⁶ 2024:DHC:5540-DB.



legitimate interest in ensuring that recruitment against aided posts is fair, transparent and free from malpractice.

13. Ms. Ahlawat refers to complaints of irregularities in recruitment undertaken by certain aided schools, including allegations concerning non-transparent scrutiny of applications, failure to call eligible candidates and reliance upon fabricated experience certificates. She submits that these instances justified suspension of recruitment until a more transparent and objective mechanism through DSSSB could be devised.

14. Reliance is placed upon *Sk. Md. Rafique v. Managing Committee, Contai Rahamania High Madrasah & Ors.*,⁷ to contend that the right under Article 30(1) is not absolute and that conditions concerning the welfare of students and teachers may be applied to provide a proper academic atmosphere, so long as they do not interfere with the right of administration or management. Further reliance is placed on *State of Uttar Pradesh v. Principal Abhay Nandan Inter College*⁸ to submit that an institution receiving aid is bound by the conditions attached thereto and therefore, expected to comply with the same.

15. Ms. Ahlawat also draws the attention of the Court to the order dated 3rd February, 2026 passed by the Division Bench in LPA 372/2025 titled *Government of NCT of Delhi v. Raisina Bengali School*. By the said order, the Division Bench has referred to a Larger Bench, *inter alia*, the questions concerning the applicability of Rule 96 to aided minority schools, the extent of the regulatory authority of the Director of Education in recruitment and the balance between the rights under Article 30(1) and the legitimate interest

⁷ (2020) 6 SCC 689.

⁸ (2021) 15 SCC 600.



of the State in ensuring transparency, quality of education and financial accountability. On that basis, Ms. Ahlawat initially suggested that the hearing of the present petition be deferred until the Larger Bench renders its opinion.

Analysis

16. The Court has considered the submissions. There can be no quarrel with the proposition that an institution which receives grant-in-aid is bound to observe valid regulatory requirements governing the utilisation of public funds. The State is entitled to ensure that recruitment is undertaken against sanctioned posts, that the applicable mode of recruitment and roster are observed, that the candidates possess the prescribed qualifications and experience, and that no liability is imposed upon the public exchequer in respect of appointments made contrary to law.

17. Equally, the right under Article 30(1) is not a right to maladminister. The decisions in ***Sk. Md. Rafique*** and ***Principal Abhay Nandan Inter College*** recognise the authority of the State to impose reasonable regulatory measures in the interests of students, teachers and the maintenance of educational standards.

18. The precise extent of the regulatory authority of the Directorate and the applicability of Rule 96 to aided minority schools are among the questions presently awaiting consideration by the Larger Bench. It is neither necessary nor appropriate for this Court to pronounce upon those wider questions in the present proceedings.

19. The controversy arising from the impugned communications lies within a narrower compass. The Petitioners' proposal was not rejected on the ground that the posts were outside the sanctioned aided strength, that no



vacancies existed, that the applicable roster had not been maintained, that surplus employees were available for absorption, or that the candidates proposed to be appointed did not possess the prescribed qualifications.

20. The sole ground assigned in both communications was that a proposal to undertake recruitment in aided schools through DSSSB was under consideration and that, until its finalisation, no aided school would be permitted to undertake direct recruitment.

21. The pendency of the reference in LPA 372/2025 does not preclude this Court from examining the legality of that reason. The questions referred to the Larger Bench concern the applicability of Rule 96 and the permissible extent of governmental oversight. The present communications do not proceed on any non-compliance with Rule 96 or any other statutory requirement. They proceed entirely upon a pending proposal to replace the existing recruitment mechanism with recruitment through DSSSB.

22. A proposal under consideration does not acquire normative force merely because the Government intends to adopt it at a future stage. Until the governing statutory regime is validly altered, administrative action must conform to the law presently in force. Executive instructions may supplement statutory rules where the rules are silent; they cannot amend, supersede or suspend the operation of statutory provisions. The principle stands settled in *Sant Ram Sharma v. State of Rajasthan*.⁹

23. No statutory amendment, notified rule or final policy placing recruitment in aided schools under DSSSB has been brought to the notice of the Court. The existing recruitment process could not, therefore, have been

⁹ AIR 1967 SC 1910.



kept in indefinite abeyance solely in anticipation of a different mechanism being introduced at some uncertain future date.

24. The Respondents have also relied upon the circular dated 3rd February, 2006, under which aided schools were required to obtain clearance before initiating direct recruitment. The circular envisages that, before such clearance is granted, the Directorate would examine whether any surplus employee is available for absorption. Such scrutiny may have a legitimate regulatory and financial purpose. The circular does not, however, authorise an indiscriminate suspension of recruitment in every aided school merely because an alternative recruitment policy is under contemplation.

25. The counter affidavit seeks to support the embargo by referring to alleged malpractices in recruitment undertaken by other aided schools. These allegations do not form part of either of the impugned communications. Several of the developments relied upon in the counter affidavit, including the constitution of a committee by the Lieutenant Governor on 10th October, 2023, are subsequent to the impugned decisions.

26. It is settled that the validity of an administrative decision must be tested on the reasons which weighed with the authority at the time the decision was made. An order which is otherwise unsustainable cannot be improved by reasons subsequently introduced through an affidavit.¹⁰

27. In any event, complaints concerning recruitment by other institutions may justify the prescription of lawful safeguards, closer scrutiny of records, verification of qualifications and action against institutions found to have committed specific irregularities. They cannot, without an enabling provision, justify an indefinite prohibition upon recruitment by every aided



school. Significantly, no allegation of malpractice in recruitment has been made against the Petitioner School.

28. The offer to deploy guest teachers does not answer the grievance of the Petitioners. Guest teachers may be engaged as an interim measure to prevent disruption of classroom instruction while a regular vacancy is in the process of being filled. Such deployment does not amount to filling a permanent sanctioned vacancy and cannot furnish a justification for keeping regular recruitment itself in abeyance. The circular dated 20th January, 2021, upon which the Respondents rely, also describes deployment of guest teachers as a temporary measure.

29. The Court is conscious of the order of reference in LPA 372/2025. The order merely refers the formulated questions to a Larger Bench and does not direct that recruitment in all aided minority schools be stayed pending the reference.

30. In *St. Anthony's Boys Secondary School v. Directorate of Education*,¹¹ a Coordinate Bench, after taking note of the reference in LPA 372/2025, declined to postpone adjudication where such postponement would cause immediate prejudice. The relief granted therein was made subject to the orders which may be passed by the Larger Bench.

31. Although the factual circumstances in that case concerned employees who had already been appointed and were awaiting release of grant-in-aid, the course adopted therein is apposite. In the present case, the School asserts that it is functioning with only four regular teachers and that a further

¹⁰ *Mohinder Singh Gill v. Chief Election Commissioner*, (1978) 1 SCC 405.

¹¹ 2026:DHC:5271.



indefinite postponement would seriously impair its ability to discharge its educational obligations.

32. At the same time, the regulatory concerns expressed by the Directorate cannot be disregarded. Those concerns can, for the present, be adequately addressed by binding the Petitioners to their statement that the recruitment shall be undertaken strictly in accordance with Rule 96 and all other applicable regulatory requirements, without expressing any opinion as to whether Rule 96 applies to an aided minority school as a matter of law or upon the precise extent of the role of the nominees of the Directorate.

33. The Court, therefore, holds that the Respondents could not have declined to permit recruitment solely because a proposal to recruit staff of aided schools through DSSSB was under consideration. The contemplated proposal, having neither been finalised nor acquired the force of law, could not operate as an embargo upon recruitment under the existing regime.

Directions

34. Accordingly, the writ petition is disposed of with the following directions:

- i. The communications dated 22nd September, 2022 and 14th June, 2023 are set aside insofar as they decline recruitment on the ground that a proposal to undertake recruitment through DSSSB is under consideration.
- ii. The recruitment proposal already submitted by the Petitioners shall stand revived. The Petitioners shall, within ten days, furnish to the concerned Deputy Director of Education an updated statement identifying the teaching and non-teaching vacancies which continue to exist within the sanctioned aided strength of the School.



- iii. The updated proposal shall be accompanied by the latest post-fixation statement, the applicable roster, particulars concerning the mode by which each vacancy is required to be filled, and such other documents as are required under the applicable Rules.
- iv. Within two weeks of receipt of the updated proposal, the Directorate shall communicate to the Petitioners any specific objection concerning the sanctioned status of a post, the applicable mode of recruitment, availability of surplus employees for absorption, the roster or any other statutory requirement. The proposal shall not be declined merely on the ground that recruitment through DSSSB is contemplated or under consideration, or on the basis of general allegations concerning recruitment by other aided schools.
- v. Having regard to the statement made on behalf of the Petitioners, the Selection Committees shall, without prejudice to the questions pending before the Larger Bench, be constituted in accordance with Rule 96 of the Delhi School Education Rules, 1973. The Directorate shall make the nominations contemplated under the said Rule within the same period of two weeks.
- vi. The recruitment process shall thereafter be undertaken strictly in accordance with the applicable recruitment rules and the qualifications, experience, age, roster and other regulatory requirements governing the respective posts. The role of the nominees of the Directorate shall be governed by the applicable provisions of the Delhi School Education Rules, without prejudice to the decision of the Larger Bench.



vii. The Petitioners shall endeavour to conclude the recruitment process within eight weeks from the date on which the nominations are communicated by the Directorate.

viii. This order shall not be construed as authorising recruitment against any post which does not form part of the sanctioned aided strength. Nor does it determine any claim for grant-in-aid in respect of a post which is found not to fall within such sanctioned strength.

ix. Nothing in this order shall preclude the Directorate from pointing out or taking action in respect of any specific violation of the applicable statutory provisions found in the recruitment process, subject to the rights and remedies available to the Petitioners in law.

35. The present judgment is confined to the legality of the reasons recorded in the impugned communications. This Court has expressed no opinion on the questions referred to the Larger Bench in LPA 372/2025, and all rights and contentions of the parties in that regard are left open.

36. The writ petition, along with the pending applications, stands disposed of in the above terms.

SANJEEV NARULA, J

JULY 17, 2026/hc