that it would be a case of palpable injustice to the assessees to force him to adopt the remedies provided by the Act. * * * *"

Consequently, the simple fact that the compensation awarded has to be deposited before an appeal can be entertained, would furnish no ground to entertain the writ petition bypassing the statutory remedy of appeal. Moreover, the Workmen's Compensation Act is a welfare legislation meant to provide speedy remedy to the workmen in case of injuries received by them in the course of their employment. The Legislature in its wisdom has laid down that the workman must get the compensation awarded before the matter is allowed to be taken up in appeal by the employer. The entertainment of the petition under Article 226 of the Constitution would obviously defeat the intent and purpose of the legislation and it would be only in rare and exceptional cases where the order on the face of it shows violation of some statute or inherent lack of jurisdiction that the court would be justified in entertaining the petition under Article 226 of the Constitution bypassing the statutory remedy. We are, therefore, of the considered opinion that the decision in *Baru Ram's case* (supra) was not correctly arrived at and overrule the same.

(4) As in the present case no exceptional circumstance has been shown apart from the fact that the compensation awarded has to be deposited before the appeal can be maintained, we find no reason to entertain this petition which is accordingly dismissed with costs and the petitioner is relegated to the ordinary remedy under the Act.

N.K.S.

Before : P. C. Jain, C.J., & S. S. Kang, J.

D.A.V. COLLEGE TRUST AND MANAGEMENT SOCIETY and others,—*Petitioners.*

versus

PANJAB UNIVERSITY, CHANDIGARH and another,—*Respondents.*

Civil Writ Petition No. 3703 *of* 1983.

February 4, 1986.

Constitution of India, 1950—Articles 29 and 30—Panjab University Calendar, 1979, Volume I, Chapter VIII (E)—Regulation 7—University framing a regulation fixing an inflexible age of superannuation of teachers of non-government affiliated colleges—Minority

institutions also governed by this regulation—Such a regulation—Whether violative of the right of the minorities to establish and administer educational institutions—Article 30—Whether violated—Regulation 7 fixing the age of superannuation of teachers of non-government affiliated colleges at 60 years—Other universities in the State fixing different age of superannuation of such teachers—Regulation 7—Whether arbitrary and discriminatory.

Held, that ages of 55 and 58 years were regarded in our country as the permissible field of operation for fixing the age of retirement. Neither the American nor the English opinion or norms for fixing the retirement age can render invalid which is widely accepted in our country as reasonable for that purpose. So, the prescription of age in the case of teachers of non-Government Colleges at the age of 60 years is reasonable taking into account the level of peak performance attained by ordinary Indians. If the age of retirement in case of civil servants at 55—58 years can be held to be reasonable, it cannot be legitimately argued that the age of retirement in case of Teachers of non-Government Colleges at 60 years is unreasonable or arbitrary. The University in order to bring about uniformity and certainty in the minds of the aspirants of promotion for higher posts has fixed as inflexible age of retirement. This decision cannot be termed as arbitrary. It is a matter of common knowledge that after attaining the age of 60 years, most people lose their keenness and initiative. They are not in a position to give their best to the students or the institution. Most of them are not capable of rendering efficient service and their replacement by younger people infuses a fresh blood and new ideas in the institution. It is in the interest of the efficiency and excellence of education, because most people in the evening of their life are not capable of keeping pace with the fast tempo of academic work and meeting its other exacting requirement. Even if there is no onset of senile inefficiency the peak level of performance has surely been long past. The Regulation is directly relatable to the object to be achieved i.e. excellence in education. The Society cannot afford the luxury of allowing Teachers to continue their service after they have passed the point of peak level performance. The Regulation is, therefore, not arbitrary.

(Para 12).

Held, that Regulation 7 of the Regulations for Conditions of Service and Conduct of Teachers in non-Government Affiliated Colleges, framed by the Panjab University does not discriminate between persons and institutions similarly situated. The Panjab University, Gurunanak Dev University, Amritsar and Delhi University have been set up by different Acts of the State Legislature and the Parliament, and there is no geometrical congruity between the three Institutions. They have their own personalities and do not form a class. Each

one of them is a class in itself. The teachers working in non-Government colleges affiliated to the Panjab University cannot, therefore, claim to be treated in the same manner as the private colleges or the employees affiliated to those Universities are dealt with. The differentia is self-speaking. Simply because they are Universities, the curriculum, the methods of study and the conditions of service of teachers could not be the same. There is no justification for the conclusion that the fixing of retirement age at 60 years in Panjab is invalid since in other Universities or States the age if fixed at 65 years. Both fall within the constraints of the Constitution and neither the one nor the other can be considered to be arbitrary or unreasonable. The Regulation is, therefore, not discriminatory.

(Para 14).

Held, that Regulation 7 does not go beyond the region of permissible regulations and does not amount to restrictions on the recognised rights of minorities in the matter of establishing and administering educational institutions. Article 30 enshrines the fundamental right of the minority institutions to manage and administer their educational institutions, which is in consonance with the secular nature of democracy and directive principles of the Constitution. But this right does not give a free licence for maladministration so as to defeat the avowed object of the Article namely excellence and perfection in the field of education. The State or the University has no right to interfere in the internal administration or management of the minority institutions. It can, however take regulatory measures to promote efficiency and excellence of educational standards and issue guide lines for the purpose of ensuring the security of service of the Teachers and other employees. This is not to say that the University can, under the garb or colour of adopting regulatory measures, interfere with the management of minority institutions so as to render the right of management vested in the minority, nugatory or illusory. The idea underlying Regulation 7 is not to interfere in the internal management of the private colleges but it is merely to improve the excellence and efficiency thereof. Only good and efficient teachers can impart excellent education. In order to maintain educational standards it is imperative that the educational institution is competently staffed and that the Teachers are in a condition and position to give their best to the students. Regulations which are made in order to ensure the efficiency and excellence of education by providing for conditions of service, security of tenure and age of superannuation of the Teachers do not in any way offend the fundamental rights of minorities to administer their educational institutions enshrined in Article 30(1).

(Para 18).

Petition under Articles 226 and 227 of the Constitution of India praying that this Hon'ble Court may be pleased to issue such writ,

order or directions as may do complete justice between the parties and in particular be pleased :—

(a) *to issue a writ of* certiorari *quashing the amendment made in Regulation 7 of the Panjab University in* 1980 (*Annexure P.* 4) ; *and*

(b) *in the alternative declare that the said regulation 7 as reproduced in Annexure P.* 4. *is not applicable to petitioner Nos.* 2 *and* 3 *and the petitioners are free to act in terms of its own rule regarding age of retirement set out in Para* 10 *above;*

(c) *that the filing of certified copies of Annexures P.* 1 *to P.* 4 *may be dispensed with; and*

(d) *that* status quo *regarding the office of the Principal of petitioner No.* 2, *at present held by petitioner No.* 3, *be maintained till the final disposal of the writ petition.*

Ved Vyas, Petitioner No. 1, in person with H. L. Sarin, Sr. Advocate, with R. L. Sarin, M. L. Sarin, D. K. Khanna, Sukhdev Singh, Advocates, *for the Petitioner.*

Anand Swaroop, Sr. Advocate with Manoj Swaroop, Advocate, I. D. Singh Rai, Advocate, *for Petitioner No.* 2.

J. L. Gupta, Sr. Advocate with Rakesh Khanna, Advocate and Subhash Ahuja, Advocates, *for the Respondents.*

JUDGMENT

Sukhdev Singh Kang, J.

(1) At issue, in this writ petition is the constitutional validity of Amended Regulation 7 of Regulations for Conditions of Service and Conduct of Teachers in non-Government Affiliated Colleges, framed by the Panjab University. Petitioners mount two pronged attack.

(2) The Regulation is arbitrary; it is discriminatory; it makes invidious discrimination between similarly situated persons and institutions and it is thus repugnant to Article 14 of the Constitution of India.

(3) The Regulation offends Article 30 of the Constitution. The petitioner No. 2 is a minority Institution. By providing for an inflexible age of superannuation of Teachers of Non-Government

Colleges, the Regulation corrodes the core of management, a fundamental freedom guaranteed to the minorities to establish and manage Educational Institutions of their choice. To begin with the factual matrix:

(4) Petitioner No. 1, the D.A.V. College Trust and Management Society (hereinafter referred to as 'the Society') is a charitable Society, registered in 1886, under the Societies Registration Act. The Society was promoted by leading Arya Samajists of Punjab in the sacred memory of the Founder of Arya Samaj, Swami Dayanand Saraswati, for the establishment of Educational Institutions, primarily to further the study of Vedic Culture and propagation of Hindi language in Devnagri script. It is constituted by elected representatives of various Arya Samaj Bodies and Institutions in the country and is managed by Arya Samajists. All the Institutions of the Society are the Institutions of the Arya Samaj.

(5) The Society is having about 250 Educational Institutions, including 33 Colleges and 140 aided-Schools, spread over the States of Punjab, Haryana, Bihar, Maharashtra, Orissa and Eastern States and the Union Territories of Delhi and Chandigarh. Petitioner No. 2 Mehar Chand, D.A.V. College for Women, Chandigarh, is an Arya Samaj Institution and is one of the constituent units of the Society, petitioner No. 1. It was started in 1968, in the memory of its former President, late Shri Mehar Chand Mahajan. Petitioner No. 3 Smt. Shakuntla Roy is the Founder Principal of the College. She was appointed in 1968 and continues to function as such in the office since then. She attained the age of 60 years on 10th April, 1983, and she was due to retire from her office on 30th April, 1983, in accordance with the rules of the Society, petitioner No. 1, as well as according to the Regulations of the Panjab University. Petitioner No. 1 was keen that petitioner No. 3 should continue to serve the College for a further period of five years. In arriving at this decision, the management of the Society had been influenced by the fact that petitioner No. 3 was enjoying excellent health; she was mentally fit and capable to work as the Principal of the College for another five years. According to the Rules of the Society, petitioner No. 1, all whole-time members of the teaching staff retire on reaching the age of 60 years, however, extension up to the age of 63 years, may be allowed (on the initiative of the Committee) in special cases.

(6) The petitioners claim that Regulation No. 7 is wholly arbitrary and repugnant to Article 14 of the Constitution. There is no rationale behind this drastic provision, which predicates that extension in service shall not be granted to a Teacher who attains the age of 60 years, irrespective of his/her physical and mental fitness. There is nexus between the absolute prohibition to extension and the object intended to be achieved, namely efficiency and excellence of teaching and administration. The petitioners plead that the Regulation is discriminatory. Most of the Universities in the region have provisions for extension of service in the case of members of Teaching Staff more or less on the lines of unamended Regulations. In the statutes of Delhi University, Delhi, there are provisions enabling the Authorities to grant extension to the Teachers and Principals upto the age of 65 yers. There are similar Regulations in Gurunanak Dev University, Amritsar. The enforcement of the amended Regulation has also resulted in inequality before law inasmuch as the Teaching Staff of the non-Government Colleges of Panjab University cannot have the benefit of extension of service even if they are physically and mentally fit. Absolute prohibition to extension of the tenure of service of the members of the Teaching Staff is not conducive to efficient teaching or excellence of education. The petitioner-Society has its own rules regarding retirement of its Teachers under which the age of retirement is fixed at 60, but extension of tenure upto the age of 63 years is permissible in certain cases. In case of conflict between the impugned Regulation 7 and this rule of the Petitioner No. 1, the latter will prevail in view of the protection afforded to the Educational Institutions of the minorities under Articles 29 and 30 of the Constitution of India. It is further averred that Arya Samajists are religious and linguistic minority in the area of operation of the Panjab University and in fact in the country as a whole. Petitioner No. 1 is thus entitled to establish and manage its educational institutions without any interference and hinderance from the Universities. The selection, appointment and continuation in service of the Principal of an Educational Institution is one of the most important facts of its Administration and the petitioner No. 1 is entitled to extend the tenure of Petitioner No. 3 as Principal of the College till she attains the age of 65 years.

(7) The petitioners have arraigned Panjab University, Chandigarh, and its Vice-Chancellor as Respondents 1 and 2 to this writ petition.

(8) The respondents have resisted this writ petition and have filed written statement controverting the material pleas taken in the writ petition. It has been denied that the Arya Samaj is a religious and linguistic minority; and that Arya Samajists are a minority in the area of operation of the Panjab University. It is contended that the provisions of Article 30 of the Constitution of India are not attracted. Alternatively, it is pleaded that the Regulation 7 is a regulatory measure designed to promote the efficiency and excellence of educational standards. It does not in any way destroy or interfere with the administrative autonomy or the core of management of the institution, so as to render the right of the administration of the management nugatory or illusory. The Government or the University can frame rules and regulations governing the conditions of service of Teachers in order to secure tenure of service, laying down the age of entry into service, qualification for recruitment and the age of superannuation or measures calculated to ensure the appointment into service of good Teachers and to promote the standards of education. The impugned Regulation is applicable to all non-Government Educational Institutions affiliated to the Panjab University and is not discriminatory. Since the Regulation has been framed to ensure the excellence of educational standards and to provide for security of tenure of Teachers of the Colleges affiliated to the University, it does not offend the provisions of Article 30 of the Constitution. It was averred that petitioner No. 3 had attained the age of 60 years on 10th April, 1983, and was due to retire on 30th April, 1983 (the last day of the month of April). Petitioners Nos. 1 and 2 did not advertise the post of Principal and it cannot be said that they had failed to find an equally or more comptent person to fill in the post. The grant of extension of five years to petitioner No. 3 was in violation of Regulation 7. The University had apprised petitioner No. 2 of the true legal position. Thereafter, petitioner No. 2 informed the University that the post of the Principal had been advertised. The amendment of Regulation 7 was necessitated by the past experience and on the recommendation of the University Grants Commission. Petitioner No. 3 filed an affidavit by way of a rejoinder to the written statement of respondents 1 and 2, wherein the stand taken in the writ petition was reiterated. It was pleaded that it was not open to the University to interfere with the right of the minorities to establish its Educational Institutions under the guise of framing the Regulations governing the conditions of service of Teachers in order to secure their tenure of service. It was contended that the

action of the respondents is discriminatory vis-a-vis petitioner No. 3. The University, respondent No. 1 had not been enforcing Regulation 7 in numerous cases and instances thereof have been given in paragraphs 17 and 24 of the rejoinder.

(9) It will be apposite to juxtapose the amended Regulation 7 with the unamended Regulation at the very threshold:

"Regulation 7 *(unamended)*	*Regulation* 7 (amended)
The age of retirement of a teacher shall be 60 years and may be extended by the Governing Body upto 65 years depending on the physical and mental fitness of a teacher.	All whole-time teachers in non-Government Colleges affiliated to the university shall retire on attaining the age of 60 years and thereafter no extension in service shall be granted.
Every teacher shall retire from the service on the after-noon of the last day of the month in which his retirement falls.	Every teacher shall retire from the service on the after-noon of the last day of the month in which his retirement falls."

(10) It is manifest that after the amendment of Regulation 7, the powers of the Governing Body to extend the age of retirement of the Teachers has been taken away. It has to be determined whether this action of the University is arbitrary and unrelatable to the objects to be achieved, i.e., the excellence of education.

(11) It has been conceded that there has to be an age of retirement for Teachers of non-Governmnt Colleges, affiliated to the Punjab University. Even before the present amendment Regulation 7 fixed the age of retirement at '60'. It only empowered the governing bodies of the private Colleges to extend the age of retirement of the Teachers in their Colleges upto 65 years depending on the physical and mental fitness of a Teacher. Even the Regulation framed by the petitioner No. 1 prescribed the age of retirement of its Teachers at 60 years which in suitable cases could be extended to 63 years. The age of superannuation of teachers of Government Colleges affiliated to Panjab University is 58 years. Indeed the stipulation as to age of retirement is a common feature of all services.

(12) In order to achieve excellence of education optimum efficiency in imparting instructions and running of the Educational

Institutions, it is imperative to fix the age of retirement. The point of peak level efficiency is bound to differ from individual to individual but the age of retirement cannot obviously vary from individual to individual for that reason. A common scheme of general application governing superannuation has, therefore, to be evolved in the light of experience regarding performance level of Teachers including Principals and the need to open up promotional opportunities to Teachers at lower levels early in their career. Inevitably, the University has to counter-balance the conflicting claims while determining the age of superannuation. On the one hand the Educational Institutions cannot be deprived of the benefit of mature experience of senior Teachers; on the other hand a sense of frustration and stagnation cannot be allowed to generate in the minds of the junior members of the teaching staff and the younger sections of Society. The balance of these conflicting claims of different segments of Society involves minute questions of policy which must, as far as possible be left to the judgment of the University Authorities. The claims involve considerations of varying vigour and applicability but while resolving the validity of the popular issues like the age of retirement, it is not proper to put the conflicting claims in a sensitive judicial scale and decide the issue by finding out which way the balance tilts. Fixation of age of retirement shall be arbitrary or unreasonable, if it does not accord with the principles which are relevant for fixing the age of retirement or if it does not subserve the purpose of imparting of education efficiently. The impugned regulation shall have to be held valid if the fundamental premise on which it proceeds has been accepted as fair and reasonable in comparable situation, if its provisions bear nexus with the objects to be achieved and it does not offend against the Constitutional limits on the legislative power to pass regulations which bear on fundamental rights. It is not necessary to dilate upon this principle any further because the matter stands concluded by the latest decision of the apex Court in *K. Nagaraj and others etc.* v. *State of Andhra Pradesh and another etc.*, (1). In that case the *vires* of clause 10 of the Andhra Pradesh Public Employment (Regulation of Condition of Service) Ordinance which reduced the age of superannuation of government employees from 58 years to 55 years was held to be neither arbitrary nor irrational. The following observations apply to the case in hand :—

> "Indeed, the acceptance of argument advanced by the various counsel for the petitioners must lead to the conclusion

(1) AIR 1985 S.C. 551.

that there has to be a uniform age of retirement all over India. If reduction of the retirement age from 58 to 55 is to be regarded as arbitrary on the ground that it overlooks the advance made in longevity, fixation of retirement age at 58 is also likely to sustain the charge of arbitrariness. The argument could still be made that improvement in the expectation of life requires that the age of retirement should be fixed at 60 or 62 or even at 65. *Then again, though immutable considerations which are generally or universally true like increased life expectation are as much valid for Jammu and Kashmir as for Tamil Nadu, that cannot justify the conclusion that fixation of the retirement age at 55 in Jammu and Kashmir is invalid since the State of Tamil Nadu has fixed it at 58. Both can fall within the constraints of the Constitution and neither the one nor the other can be considered to be arbitrary or unreasonable. There can be large and wide area within which the administrator or the legislator can act, without violating the constitutional mandate of reasonablenes. That is the area which permits free play in the joints.....*" (Emphasis Supplied).

Their lordships, after considering the reports of various Pay Commissions appointed by the Government of India and various States recommending the age of retirement of civil servants at 55 years or 58 years, concluded that the ages of 55 and 58 years were regarded in our country as the permissible field of operation for fixing the age of retirement. Neither the American nor the English opinion or norms for fixing the retirement age can render invalid which is widely accepted in our country as reasonable for that purpose. So, the prescription of age in the case of Teachers of non-Government Colleges at the age of 60 years is reasonable taking into account the level of peak performance attained by ordinary Indians. If the age of retirement in case of civil servants at 55—58 years can be held to be reasonable, it cannot be legitimately argued that the age of retirement in case of Teachers of non-Government Colleges at 60 years is unreasonable or arbitrary. The University in order to bring about uniformity and certainty in the minds of the aspirants of promotion for higher posts has deleted the provisions regarding extension of retirement age to 65 years in certain cases. This decision, which introduces uniformity and certainty cannot be termed

as arbitrary. It is a matter of common knowledge that after attaining the age of 60 years, most people lose their keenness and initiative. They are not in a position to give their best to the students or the institution. Most of them are not capable of rendering efficient service and their replacement by younger people infuses a fresh blood and new ideas in the institution. It is in the interest of the efficiency and excellence of education, because most people in the evening of their life are not capable of keeping pace with the fast tempo of academic work meeting its other exacting requirement. Even if there is no onset of senile inefficiency the peak level of performance has surely been long past. The impugned Regulation is directly relatable to the object to be achieved i.e., excellence in education. The Society cannot afford the luxury of allowing Teachers to continue their service after they have passed the point of peak level performance. The Regulation is not arbitrary.

(13) Mr. Ved Vyas, the learned counsel for the petitioners, has strenuously argued that Regulation 7 made an invidious discrimination between persons and Institutions similarly situated. After the re-organization of the State of Punjab on 1st of November, 1966, the Panjab University has become an inter-State body corporate under section 72 of the Punjab-Re-organization Act, 1966. Under section 72, the Central Government has issued various directions which have the effect of modifying the Panjab University Act, 1947. The Regulations framed including impugned Regulation 7 have been enforced after getting the sanction and approval of the Central Government in accordance with the provisions of Punjab Re-organization Act. The Panjab University is thus governed by Central Law. Delhi University has been set up under an Act passed by the Parliament. The two Universities are thus similarly situated. The Union Government has discriminated against the petitioners through Regulation 7 which shall be deemed to have been framed by the Central Government. This argument has not commended itself to us. It is true that because of the operation of section 72 of the Punjab Re-organization Act, 1966, the Panjab University has become an inter-State Body Corporate and the Central Government has been issuing directions which had the effect of modifying the Panjab University Act, 1947, passed by the Punjab Legislature. It is also correct that after 1966, the Regulations framed by the Senate of the Panjab University become law only after receiving the approval and sanction of the Central Government, nevertheless, the Panjab University remains a creature of the Panjab University Act.

It was not set up under an Act of Parliament. There is no provision in the Punjab Re-organisation Act on the strength of which it may be argued that after the Re-organization, the Panjab University has become an Institution established by an Act of Parliament. By conferring powers on the Central Government to make suitable modifications in the existing statutes, the nature and complexion of the State Law has not changed. The Senate of Panjab University still remains the only authority competent to frame regulations. Simply because these regulations become law after they are sanctioned by the Central Government, does not change their authorship or nature; they still remain regulations framed by the Panjab University. The position is somewhat akin to the Acts passed by various State Legislatures which is order to meet certain requirements of various provisions of the Constitution are reserved for the approval and assent of the President of India. After receiving such assent, such Acts continue to be State Acts. They do not partake the character of Acts of Parliament or Central Legislation by the Union of India. There is a technical flaw in the argument. If the petitioners wanted to challenge the Regulation, as a Central Law, then it was incumbent upon the petitioner to implead the Union of India as a respondent. They have not done so. So, they cannot raise this argument.

(14) It is sought to be argued next that the Delhi University and the Gurunanak Dev University, Amritsar, situated in the State of Punjab were similarly situated. The Teachers of both Delhi and Gurunanak Dev Universities can subject to certain conditions, serve their Institutions uptill the age of '65'. The Managements of the private Colleges affiliated to the Panjab University and the Teachers employed by them have been discriminated. The concession of extension of the age of superannuation has been irrationally withdrawn in their case. We are not impressed. The Panjab University, the Gurunanak Dev University, Amritsar and the Delhi University have been set up by different Acts of the State Legislature and the Parliament. There is no geometrical congruity between the three Institutions. They have their own personalities. They do not form a class. Each one of them is a class in itself. The petitioners, therefore, cannot claim to be treated in the same manner, as the private Colleges or the employees affiliated to those Universities are dealt with. The differentia is self-speaking. Simply because they are Universities, the curriculum, the methods of study and the conditions of service of Teachers could not be the same. Indeed it

has not been argued that they are the same. The observations of their Lordships of the Supreme Court in *K. Nagraj's case* (supra) extracted above provide a complete answer to this argument. Their Lordships have observed that there is no justification for the conclusion that the fixing of retirement age at 55 years in Jammu and Kashmir is invalid since the State of Tamil Nadu has fixed it at 58 years. Both fall within the constraints of the Constitution and neither the one nor the other can be considered to be arbitrary or unreasonable. There can be large and wide area within which the Administrator or the Legislature can act, without violating the constitutional mandate of reasonableness. That is the area which permits free play in the joints. The Regulation is not discriminatory.

(15) Shri Ved Vyas vigorously argued that Arya Samaj is a religious and linguistic minority in the country as a whole and in any case within the area of operation of the Panjab University. Regulation 7 tends to corrode the core of management and the autonomy of petitioner No. 1 by prescribing an inflexible age of superannuation for teachers of the non-Government Colleges affiliated to it. To determine and fix the age of retirement of teachers is an important concommitant of management of an educational institution. The Regulation violates Article 30(1) of the Constitution and is inapplicable to minority institutions.

(16) Shri J. L. Gupta, learned counsel for the respondents contended that the question as to whether Arya Samaj is a minority or not cannot be decided on the basis of scanty material on the file having a bearing on this issue and as such the same may not be decided. Mr. Gupta, however, very fairly submitted that he will argue the case treating Arya Samaj as a minority. In this situation we are saved the exercise of determining as to whether Arya Samaj is a minority or not. We shall, however, deal with the case on that premise.

(17) Shri Gupta then countered the argument raised on behalf of the petitioners. He contended that Regulation 7 was designed to regulate the conditions of service of the Teachers including those of the minority institutions, so as to bring about and maintain standards of education. The Regulation does not in any way impinge on the rights of minorities to establish and administer the educational institutions. It is uniformly applicable to all the Colleges affiliated to the Panjab University. Teachers, who are past the stage of their peak performance cannot give their best to the students. Such

Teachers cannot help in achieving excellent standards of education. The University is fully competent to prescribe the age of superannuation of Teachers. The Regulation does not in any way interfere with the internal management of the minorities in administering their educational institutions.

(18) Regulation 7 does not go beyond the region of permissible regulations and does not amount to restrictions on the recognised rights of minorities in the matter of establishing and administering educational institutions. Article 30 enshrines the fundamental right of the minority institutions to manage and administer their educational institutions, which is in consonence with the secular nature of democracy and directive principles of the Constitution. But this right does not give a free licence for mal-administration so as to defeat the avowed object of the Article namely excellence and perfection in the field of education. The State or the University has no right to interfere in the internal administration or management of the minority institutions, it can, however, take regulatory measures to promote efficiency and excellence of educational standards and issue guide lines for the purpose of ensuring the security of service of the Teachers or other employees. This is not to say that the University can, under the garb or colour of adopting regulatory measures, interfere with the management of a minority institution so as to render the right of management vested in the minority, nugatory or illusory. The idea underlying Regulation 7 is not to interfere in the internal management of the private Colleges, but it is merely to improve the excellence and efficiency thereof. Only good and efficient teachers can impart excellent education. In order to maintain educational standards it is imperative that the educational institution is competently staffed and that the Teachers are in a condition and position to give their best to the students. Regulations which are made in order to ensure the efficiency and excellence of education by providing for conditions of service, security of tenure and age of superannuation of the Teachers do not in any way offend the fundamental rights of minorities to administer their educational institutions, enshrined in Article 30(1). The summit Court had on various occasions interpretted Article 30(1) and explained its scope and ambit. In *The All Saints High School, etc., etc.* v. *The Government of Andhra Pradesh and others, etc.* (2), Chief Justice Chandrachud had the occasion to consider the previous decision of

(2) AIR 1980 S.C. 1042.

the final Court in Re: Kerala Education Bill, 1957; *Rev Sidhrajbhai Sabhai* v. *State of Bombay,* (3), *Rev. Father W. Proost* v. *The State of Bihar,* (4), *State of Kerala* v. *Very Rev. Mother Provincial,* (5). *D.A.V. College* v. *State of Punjab,* (6). *The Ahmedabad St. Xaviers College Society* v. *State of Gujrat,* (7), *Gandhi Feiz-e-am College Shahjahanpur* v. *University of Agra,* (8) *and Lilly Kurian* v. *Sr. Lewina,* (9). The scope and ambit of Article 30(1) was explained by the learned Chief Justice and the principles enunciated in the above mentioned decisions were culled out. It was observed :—

> "These decisions show that while the right of the religious and linguistic minorities to establish and administer educational institutions of their choice cannot be interfered with, restrictions by way of regulations for the purposes of ensuring educational standards and maintaining the excellence thereof can be validly prescribed. For maintaining educational standards of an institution, it is necessary to ensure that it is competently staffed. Conditions of service which prescribe minimum qualifications for the staff, their pay scales, their entitlement to other benefits of service and the laying down of safeguards which must be observed before they are removed or dismissed from service or their services are terminated are all permissible measures of a regulatory character. As observed by Dass C. J. in Re: Kerala Education Bill, "Right to administer cannot obviously include the right to mal-administer" and in the words of Shah J., in Rev. Sidhrajbhai, "The right is subject to reasonable restrictions in the interest of

(3) (1963) 3 S.C.R. 837.
(4) (1969)2 S.C.R. 688.
(5) (1971)1 S.C.R. 734.
(6) (1971)1 Supp. S.C.R. 688.
(7) (1975)1 S.C.R. 173.
(8) (1975)3 S.C.R. 810.
(9) (1979)1 S.C.R. 820.

efficiency of instructions, discipline, health, sanitation, morality, public order and the like". Hidayatullah C.J. said in Very. Rev. Mother Provincial that "Standards of education are not a part of management as such" that the "minority institutions cannot be permitted to fall below the standard of excellence expected of educational institutions" and that "the right of the State to regulate education, educational standards and the allied matters cannot be denied". Justice Jaganmohan Reddy, in D.A.V. College, reiterated while upholding clause 18 of the Guru Nanak University, Amritsar, Act, 1961 that regulations governing recruitment and service conditions of teachers of minority institutions, which are made in order to ensure their efficiency and excellence, do not offered against their right to administer educational institutions of their choice."

(19) It is patent from the above that the right of minorities to administer their educational institutions is subject to reasonable restrictions in the interest of efficiency of instructions and for excellence of education. With this end in view, regulations governing recruitment and the service conditions of Teachers including those of minority institutions can be made to ensure the efficiency and excellence of education. This will include the laying down of age of superannuation. The matter does not require any further discussion on the principle because the same is not *res-integra*. The complete answer to the argument of Shri Ved Vyas is provided by the decision of the Apex Court in *D.A.V. College, Jullundur etc.* v. *The State of Punjab and others,* (10). Petitioner No. 1 had filed writ petition in the Supreme Court *inter-alia* challenging regulations 2(1) (a), 17 and 18 read with clause 1(2) and (3) framed by Guru Nanak Dev University, Amritsar, in exercise of the powers conferred under sub-Section (1) of Section 19 of the Guru Nanak Dev University, Amritsar Act, 1969 on the ground that they interfered with the management of their institutions and as such violate Article 30(1) of the Constitution. The Statutes above mentioned, so far as they are relevant for our purposes are reproduced below:—

"2(1) (a) A college applying for admission to the privileges of the University shall send a letter of application to the

(10) AIR 1971 S.C. 1737.

Registrar and shall satisfy the Senate :—

(a) that the College shall have a regularly constituted governing body consisting of not more than 20 persons approved by the Senate and including among others, 2 representatives of the University and the Principal of the College Ex-Officio :

PROVIDED that the said conditions shall not apply in the case of Colleges maintained by Government which shall, however, have an advisory Committee consisting of among others the principal of the College (Ex-Officio) and two representatives of the University.

17. The staff initially appointed shall be approved by the Vice Chancellor. All subsequent changes shall be reported to the University for Vice Chancellor's approval. In the case of training institutions, the teacher pupil ratio shall not be less than 1:12. Non-Government Colleges shall comply with the requirements laid down in the ordinance governing service and conduct of teachers in non-Government Colleges as may be framed by the University.

18. Non-Government Colleges shall comply with the requirements laid down in the ordinance governing service and conduct of teachers in non-Government Colleges as may be framed by the University."

Their Lordships held that the provisions contained in Clause 2(1) (a) and 17 of the statute interfered with the rights of the management of the petitioner's Colleges and were violative of Article 30(1). It was observed :—

"In our view there is no possible justification for the provisions contained in Clause 2(1) (a) and 17 of Chap. V of the statute which decidedly interfere with the rights of management of the Petitioner's Colleges. These provisions cannot, therefore, be made as conditions of affiliation, the non-compliance of which would involve dis-affiliation and consequently they will have to be struck down as offending Article 30(1)."

(20) However, provisions of Clause 18 of the Statute, which pose it that the management of non-Government Colleges shall comply with the requirements relating to service and conduct of teachers was upheld. The ratio of the decision bears extraction :—

> "38. Clause 18, however, in our view does not suffer from the same vice as Clause 17, because that provision in so far as it is applicable to the minority institutions employers the University to prescribe by regulations governing the service and conduct of teachers which is enacted in the larger interests of the Institutions to ensure their efficiency and excellence. *It may for instance issue an ordinance in respect of age of superannuation or prescribe minimum qualifications for teachers to be employed by such institutions either generally or in particular subjects.* Uniformity in the conditions of service and conduct of teachers in all non-Government Colleges would make for harmony and avoid frustration. Of course while the power to make ordinance in respect of the matters referred to is unexceptional the nature of the infringement of the right, if any, under Article 30(1) will depend on the actual purpose and import of the ordinance when made and the manner in which it is likely to affect the administration of the educational institution, about which it is not possible now to predicate."

(21) Their Lordships in terms laid down that the University can issue an ordinance in respect of age of superannuation of teachers to be employed by minority institutions. Regulation 7 only prescribes the age of superannuation and is clearly covered by the ratio in *D.A.V. College, Jullundur's case* (supra). We are thus of the view that Regulation 7 does not in any manner offend the fundamental rights of the minorities to establish and manage the educational institutions of their choice.

(22) Lastly it was contended by Shri Ved Vyas, that certain Teachers, details of whom are given in paras 17 and 24 of the rejoinder filed by the petitioner No. 3, had already crossed the age of 60 years and they had not been retired by their respective managements and that the University had not taken any action against them. Nonetheless the University had refused to approve the extension in service of petitioner No. 3.

(23) Shri J. L. Gupta, learned counsel for the respondents has submitted that the instances given by the petitioners relate to Medical Colleges. Senior Doctors are reluctant to take up teaching jobs. There is a dearth of Professors. He further submitted that action had not been taken against any College after this Hon'ble Court had granted stay in the present case. In any non-action or passivity of the University in any particular case will not entitle the petitioners to claim that Regulation 7 should not be applied to their College.

(24) We find merit in this submission of Shri Gupta. Regulation 7 has been made applicable to all the non-Government Colleges affiliated to the Panjab University. Even if the explanation given by Shri Gupta for taking no action against the Colleges detailed in the rejoinder is not accepted, that will not furnish any ground to the petitioners to claim that the provisions of Regulation 7 should not be invoked in their case. The respondents are duty bound to enforce Regulation 7. The petitioners cannot claim issuance of a Writ of Mandamus against the respondents restraining them from taking any action against the petitioner in accordance with law. A Regulation validly framed by a competent authority prescribing the age of superannuation is binding on the petitioners. They have to follow it.

(25) In the result the writ petition has no merit and the same is dismissed, with no order as to costs.

N.K.S.

Before : J. V. Gupta, J.

STATE OF HARYANA,—*Defendant-Appellant*

versus

LOK NATH,—*Plaintiff-Respondent.*

Regular Second Appeal No. 1655 *of* 1985.

February 4, 1986.

Constitution of India, 1950—*Article* 311(2)—Ad hoc *employee placed under suspension—No enquiry held—Services of such an employee thereafter terminated as no longer required—Employee—Whether entitled to full salary for the suspension period—Order of*