Lilly Kurian vs Sr. Lewina And Ors on 15 September, 1978

Equivalent citations: 1979 AIR 52, 1979 SCR (1) 820, AIR 1979 SUPREME COURT 52, 1978 LAB. I. C. 1644, (1979) 1 SCR 520 (SC), 1979 (1) SCR 820, 1979 (11) LAWYER 122, 1979 SCC (L&S) 134, (1979) 2 SCWR 63, 1979 (2) SCC 124

Author: A.P. Sen

Bench: A.P. Sen, Y.V. Chandrachud, Ranjit Singh Sarkaria, N.L. Untwalia, A.D. Koshal

PETITIONER:
LILLY KURIAN

Vs.

RESPONDENT:
SR. LEWINA AND ORS.

DATE OF JUDGMENT15/09/1978

BENCH:
SEN, A.P. (J)
BENCH:
SEN, A.P. (J)
CHANDRACHUD, Y.V. ((CJ)
SARKARIA, RANJIT SINGH
UNTWALIA, N.L.
KOSHAL, A.D.

CITATION:
1979 AIR 52 1979 SCR (1) 820
1979 SCC (2) 124
CITATOR INFO :
R 1980 SC1042 (2,12,64,81,108)
E 1987 SC1210 (5,8,9,11)
RF 1988 SC 37 (15,16)
D 1988 SC 305 (8,10,17)
RF 1990 SC 695 (5)
R 1990 SC1147 (7)
R 1991 SC2230 (4)

ACT:
Constitution of India-Article 30(1)-Scope ambit and nature of right of linguistic and religious minorities-Whether regulatory restrictions can be imposed -What are the limits-interference with right to appoint and dismiss

teaching and other staff-Whether providing a right of appeal against dismissal permissible.

HEADNOTE:

The Appellant was appointed as Principal of the St. Joseph Training College for Women, Ernakulam in the year 1957. In October 1969, there was an unfortunate incident between the Appellant and on Rajaratnam a lecturer of the College placed on deputation by the Government. On the basis of a complaint by Rajaratnam, the Managing Board initiated disciplinary proceedings against the Appellant and appointed a retired Principal of a College to be an Inquiry officer. The Appellant did not participate in the proceedings. The Inquiry officer held the Appellant guilty of misconduct. A show cause notice was given to the Appellant. The Appellant however, filed a suit challenging the validity of the proceedings. An interim injunction was issued by the Civil Court restraining the Management from implementing the decision, if any. taken in the meeting. The Managing Board after due notice to the Appellant found that the charges of misconduct were proved. Subsequently, the Court held that the dismissal of the Appellant was legal and proper. During this period the Appellant was functioning as a Principal and had sent two communications to the Secretary to the Government calling for termination of deputation of Rajaratnam. The Managing Board viewed the sending, of these communications by the Appellant without reference to it as an act of insubordination, and therefore, decided to conduct inquiry against the Appellant and she was suspended pending inquiry. A substitute Principal was appointed. The Appellant filed an appeal against the order of suspension and the Vice-Chancellor directed that the status quo be maintained. The substitute Principal filed a suit for an injunction restraining the appellant from functioning or interfering with the discharge of duties of the substitute Principal which was granted by the Munsif. The Vice-Chancellor by his orders held that the orders of dismissal and suspension passed against the Appellant were in breach of natural justice and fair play and were consequently illegal, null and void. He therefore, directed the Management to allow the Appellant to function as Principal. The Kerala. University Act, 1957 was enacted to reconstitute the University of Travancore into a teaching University for the whole of the State of Kerala. The definition of "teacher" in section 2(j) of the Act is wide enough to take in a Principal. Section 19 empowers the Syndicate to make ordinances fixing the conditions of service of teachers. The Kerala University Act 1957 was repealed by the Kerala University Act, 1969. The earlier ordinances have been saved and continued under the new Act. Ordinance 33 provides for an appeal to the Vice-Chancellor against any order passed by the Management in

respect of the penalties including penalty of dismissal. 821

The Management filed a suit in the Munsif's Court. The substitute Principal also filed a further suit against the Appellant and the postal authorities for prohibiting the postal authorities from delivering and the Appellant from receiving the articles addressed to the Principal of the College.

The Trial Court dismissed the suits holding that the Appellate power conferred on the Vice Chancellor by ordinance framed by the Syndicate was a valid conferment of power and even after the commencement of the Kerala University Act, 1969, both the Vice-Chancellor and Syndicate had concurrent powers of Appeal. It, therefore, upheld the orders of the Vice-Chancellor directing reinstatement of the Appellant in service. On appeal the District Judge held that the orders of the Vice-Chancellor were perfectly valid and with jurisdiction and that his direction to the Management to continue the Appellant as Principal was legal. The Kerala High Court reversed the judgment of the Courts below holding that the conferment by the Syndicate of the right to appeal to a teacher against the order of dismissal from service to the Vice-Chancellor cannot be said to be in excess of the permissible limits of the power to prescribe the duties and conditions of service of teachers in private colleges in terms of s. 19(j) of the Kerala University Act, 1957, and the provisions for a right to appeal were not violative of the rights guaranteed to the religious minorities under Article 30(1) and were, therefore, valid. According to the High Court although the Vice Chancellor had the power to hear an appeal against an order of dismissal he did not have expressly or impliedly, the power to order reinstatement or even to grant a declaration that the services of the appellant had been wrongly terminated. It was held that a statutory tribunal like Vice-Chancellor could not grant such a relief as the same would amount to specifically enforcing the contract of service.

Dismissing the appeals the Court,

^

HELD: 1. The expression conditions of service includes everything from the stage of appointment to the stage of termination of service and even beyond and relates to matters pertaining to disciplinary action. The High Court thus, rightly held that the right of the appeal conferred by ordinance 33 (4) forms part of the conditions of service and is, therefore, valid. [828F-G, 829A]

N.W.F. Province v. Suraj Narain, 75 I.A. 343, State of U.P. v. Babu Ram, [1961] 2 SCR 679 and State of M.P. and Ors. v Shardul Singh [1970] 3 S.C.R. 302; relied on.

2. Protection of the minorities is an article of faith in the Constitution of India. The right is subject to the regulatory power of the State. Article 30(1) is not a charter for maladministration; however regulation, so that

the right to administer. may be better excised for. the benefits of the institution, is permissible; but the moment one goes beyond that and imposes what is in truth not a mere regulation but an impairment of the right to administer the Article comes into play and the interference cannot be justified by pleading the interests of the general public. the interests justifying interference can only be the interests of the minority concerned. [837C-E]

3. It is clear from the judgment in St. Xaviers College case that 7 out of 9 judges held that the provisions contained in clauses (b) of sub sections 1 and 2 of Section 51(A) of the Act therein providing for the disciplinary control of the

822

Management, over the staff of its educational institution were not applicable to an education institution established and managed by religious and linguistic minorities. The reasons given by the majority were that the power of the Management to terminate the services of any member of the teaching or other academic and non-academic staff was based on the relationship between the employer and his employees and no encroachment can be made on this right to dispense with their services under the contract of employment, which was an integral part of the right to administer. [842B-D]

4. The High Court went wrong in holding that the Vice-Chancellor while exercising the appellate powers under Ordinance 33(4) cannot direct rein statement of a teacher or grant a declaration that his dismissal was wrongful. It also fell into error in holding that the right of appeal before the Vice-Chancellor against the teachers of Private Colleges in the matter of suspension and dismissal was not violative of the rights to religious minorities under Article 30(I) of the Constitution. [829B-C]

Ahmedabad st. Xaviers College Society and Anr. v. State of Gujarat and Anr. [1975] 1 SCR 173; relied on.

5. Unlike Article 19, the fundamental freedom under Article 30(1) is absolute in terms; it is not made subject to any reasonable restrictions of the nature the fundamental freedoms enunciated in Article 19 may be subjected to. All minorities, linguistic or religious have by article 30(1) an absolute right to establish and administer educational institution of their choice, and any law or executive direction which seeks to infringe the substance of that right under Article 30(1) would be to that extent void. [835F-G]

Rev. Sidhajbhai Sabhai v. State of Bombay, [1963] 3 S.C.R. 837.

6. The conferment of a right of appeal to an outside authority like the Vice-Chancellor under Ordinance 33(4) takes away the disciplinary power of a minority educational authority. The right of the vice-Chancellor to veto the disciplinary power of the minority institution is a clear interference with its right. It amounts to a letter on the

right of administration under Article 30(1). [837E-G]

7. The power of appeal conferred on the Vice Chancellor in ordinance 33(4) is not only a grave encroachment on the right of the institution to enforce and cover discipline in its administration but it is uncanalised and unguided in the sense that no `restrictions' are placed on the exercise of the power. The extent of the appellate power of the Vice Chancellor is unlimited and undefined. The grounds on which the Vice Chancellor can interfere are not defined and indeed, the powers are unlimited. He can even interfere against the infliction of punishment. There is complete interference with the disciplinary power of a minority institution. In the absence of any guidelines, it cannot be held that power of the Vice Chancellor under order 33(4) was merely a check on mal-administration. The ratio of St. xavier Colleges case is fully applicable. [842G-H, 843A-B]

8. Accordingly, the judgment of the High Court setting aside the two orders of the Vice Chancellor upheld by this Court although for different reasons.
[844E.-F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 728-730 of 1975.

Appeals by Special Leave from the Judgment and Order dated 19-7-1973 of the Kerala High Court in S.A. Nos. 340 and 341/73 and A.S. No. 176/73.

M. K. Ramamurthy, Amicus Curiae, S. Balakrishnan, Amicus Curiae, Miss R. Vaigai and Lilly Kurian (In person) for the Appellant.

V. A. Seyid Muhammed and K. R. Nambiar for the State of Kerala.

L. N. Sinha (for RR 1, 2 and 11 in CA 728), M. I. Joseph (CA 729), P. P. Singh, (C.A. 729, 728 and 730/78) A. G. Puddissery (C.A. 730/75) and K. M. K. Nair for RR 1, 2, 11 and 12 in C.A. 728, RR. 3, 11, 12 and 13 and RR 1, 3-5 in C.A. 730/75.

P. K. Keshava Pillai, Frank Anthony, M. K. D. Namboodiry, K. R. Choudhury, Baby Krishnan, B. Parthasarthi and Panduranga Rao for the Interveners.

The Judgment of the Court was delivered by SEN, J.-These appeals by special leave directed against the Judgment of the Kerala High Court dated July 19, 1973, raise a question of far reaching importance. The question is whether an educational institution established and managed by a religious or linguistic minority is bound by the provisions of Ordinance 33(4), Chapter LVII of the Ordinances framed by the Syndicate of the University of Kerala, under section 19(j) of the Kerala University Act, 1957.

Smt. Lilly Kurian, the appellant herein, was appointed as Principal of the St. Joseph Training College for Women, Ernakulam in the year 1957. The College was established by the Congregation of the Mothers of Carmal, which is a religious society of Nnus belonging to the Roman Catholic Church, and is affiliated to the University of Kerala. It is administered by a Managing Board, and the Provincial of the Congregation is its President.

On October 30, 1969, there was an unfortunate incident between the appellant and one P. K. Rajaratnam, a lecturer of the College, placed on deputation by the Government. On the basis of a complaint by Rajaratnam, the Managing Board initiated disciplinary proceedings against the appellant and appointed a retired Principal of the Maharaja's College, Ernakulam, to be the Enquiry Officer. The appellant did not participate in the proceedings. The attitude adopted by the appellant unfortunately was one of supreme indifference, taking the stand that the Managing Board had no competence whatsoever to initiate any such disciplinary action. The Enquiry Officer by his report dated November 27, 1969, held the appellant guilty of misconduct. The Secretary of the Managing Board accordingly served her with a notice dated December 2, 1969 stating that a meeting of the Board was to be held on December 19, 1969, to consider the representation, if any, made by her and also the punishment to be imposed, on the basis of the findings recorded by the Enquiry Officer.

In the wake of the disciplinary action, on December 16, 1969, the appellant filed a suit O.S. No. 819 of 1969 in the Munsiff's Court, Ernakulam, challenging the validity of the proceedings of the Managing Board. On December 19, 1969 the Munsiff issued an interim injunction restraining the Management from implementing the decision, if any, taken by it at the meeting to be held on that day. A meeting of the Board had, in fact, been held and a decision was taken to remove the appellant from service. The Provincial of the Congregation by virtue of her office as the President of the Managing Board, by order dated January 2, 1970, dismissed the appellant from service. It was stated that the Managing Board had after giving due notice to the appellant, and on a careful consideration of the enquiry report, and the findings thereon, found that the charges of misconduct were proved. The appellant was accordingly directed to hand over all papers, files, vouchers and documents connected with the College to Sr. Lewina, Professor, without further delay, stating that the order for her dismissal from service would be implemented immediately after the decision of the Munsiff on the application for temporary injunction.

On January 17, 1970, the Munsiff held that the dismissal of the appellant was free from any infirmity and was by the competent authority, that is the Managing Board, and, therefore, she had no prima facie case. The Munsiff accordingly vacated the injunction with a direction that temporary injunction already issued will remain in force for two weeks to enable the appellant, if she wanted to move the Vice Chancellor and obtain from him a stay of the order of dismissal. The appellant had, in the meanwhile, on January 9, 1970; already filed an appeal before the Vice-Chancellor under Ordinance 33(4), Chapter LVII of the Ordinance framed by the Syndicate, against the order of dismissal. The Vice- Chancellor by his order dated January 24, 1970, stayed the operation of the order of dismissal. The suit filed by the appellant was subsequently dismissed by the Munsiff as withdrawn.

It appears that the appellant was all the while functioning as principal of the College. It was brought to light that she had sent two communications dated October 6, 1969, and November 5, 1969, to the Secretary to the Government, Education Department, calling for termination of deputation of Rajaratnam, appointed as a Lecturer in the College by the Management, as a result of which his deputation was cancelled by the Government on December 9, 1969. The Managing Board viewed the sending of these communications by the appellant without reference to it as an act of insubordination, and, therefore, decided to conduct an enquiry against the appellant and she was suspended pending enquiry. A substitute Principal, Sr. Lewina, was appointed and the appellant was relieved of the duties on April 10, 1970. On April 13, 1970 the appellant filed an appeal to the Vice Chancellor against the order of suspension under Ordinance 33(1) of Chapter LVII, and the Vice-Chancellor by his order dated April 20, 1970 directed that the status quo be maintained. In view of this order, the Management was presumably apprehensive that the appellant might force herself upon the College. The substitute Principal, Sr. Lewina, appointed by the Management in place of the appellant accordingly on July 2, 1970 filed the suit O.S. No. 405 of 1970 in the Munsiff's Court, Ernakulam for an injunction restraining the appellant from functioning and from interfering with her discharging the duties as Principal. The Munsiff granted a temporary injunction, in the terms prayed for, which was subsequently confirmed.

The Vice-Chancellor, University of Kerala, by his two orders dated October 19, 1970 held that the order of dismissal from service and the order of suspension passed against the appellant were in breach of the rules of natural justice and fair play and were consequently illegal and null and void, and accordingly directed the Management to allow her to function as Principal. Before the orders were communicated, the Management filed the suit O.S. No. 110 of 1970 in the Munsiff's Court, Ernakulam on October, 22, 1970, seeking an injunction restraining the appellant from functioning as Principal of the College and obtained a temporary injunction. While these two injunctions were in force, the appellant wrote to the Superintendent of the Post Offices demanding delivery of letters addressed to the Principal at her residence. The non-delivery of letters created a dead lock in the administration of the College. On July 22, 1972, the substitute Principal, Sr. Lawine accordingly filed a suit O.S. No. 569 of 1972 in the Munsiff's Court, Ernakulam against the appellant and the Postal Authorities for prohibiting the one from receiving and the other from delivering, the postal articles addressed to the Principal of the College. All the three suits pending in the Munsiff's Court, Ernakulam were transferred, by the order of the District Judge, Ernakulam to the 1st Additional Sub-Court, Ernakulam for disposal.

The trial court by its judgment dated December 6, 1972 dismissed the suits holding that the appellate power conferred on the Vice Chancellor by cls. (1) and (4) of Ordinance 33, Chapter LVII of the Ordinance framed by the Syndicate under s. 19(j) of the Act, was a valid conferment of power on the Vice-Chancellor and even after the commencement of the Kerala University Act, 1969, both the Vice Chancellor and the Syndicate had concurrent powers of appeal. It, therefore, upheld the orders of the Vice- Chancellor directing reinstatement of the appellant in service. On appeal, the District Judge, Ernakulam by his judgment dated March 17, 1973 held that the orders of the Vice-Chancellor were perfectly valid and within jurisdiction, and that his direction to the Management to continue the appellant as Principal in her office was also legal. He, accordingly dismissed the appeals.

The Kerala High Court, however, by its judgment dated July 19, 1973 reversed the judgment and decree of the court below and decreed the plaintiffs' suit holding that (i) the conferment by the Syndicate of a right of appeal to a teacher against his order of dismissal from service to the Vice-Chancellor cannot be said to be in excess of the permissible limits of the power to prescribe the duties and conditions of service of teachers in private colleges in terms of s. 19(j) of the Act, and (ii) the provisions for a right of appeal contained in Ordinance 33(1) and (4), Chapter LVII of the Ordinance were not violative of the rights guaranteed to the religious minorities under Article 30(1), and were, therefore, valid, following certain observations of its earlier Full Bench decision in V. Rev. Mother Provincial v. State of Kerala. According to the High Court, although the Vice-Chancellor had the power to hear an appeal against an order of dismissal under Ordinance 33(4), he had not, expressly or impliedly, the power to order reinstatement or even to grant a declaration that the services of the appellant had been wrongly terminated. It held that a statutory tribunal like the Vice-Chancellor could not grant such a relief as the same would amount to specifically enforcing the contract of service. In reaching the conclusion, the High Court observes that this, in effect, "amounts to eviscerating the right of appeal to the Vice-Chancellor, but the remedy lies elsewhere", in the light of the authorities cited by it.

The Kerala University Act, 1957, "the Act", as the preamble shows, was enacted to reconstitute the University of Travancore into a teaching University for the whole of the State of Kerala. Section 2(a) defines "college" to mean a college maintained by, or affiliated to the University. The definition of "teacher" in section 2(j) of the Act is wide enough to take in a Principal, as any 'other person imparting instruction'. Section 5(viii) confers power on the University to affiliate to itself colleges within the State in accordance with the conditions to be prescribed in the statutes regarding management, salary and terms of service of members of the staff, and other such matters, and to withdraw affiliation from colleges. Section 15(2)(ii) enjoins that the Senate shall make, amend or repeal statutes of its own motion or on the motion of the Syndicate. The powers of the Syndicate are enumerated in section 19, the relevant provisions of which read:

> "19. Powers of the Syndicate-Subject to the provisions of this Act and the Statutes, the Executive Authority of the University including the general superintendence and control over the institutions of the University shall be vested in the Syndicate; and subject likewise, the Syndicate shall have the following powers, namely:-
>
> (a) to affiliate institutions in accordance with the conditions prescribed in the Statutes;
>
> (b) to make Ordinance and to amend or repeal the same;
>
> x x x x x x x x
>
> (j) to fix the emoluments and prescribe the duties and the conditions of service of teachers and other employees in Private Colleges."

The Kerala University Act, 1957 was repealed by the Kerala University Act, 1969 which came into force with effect from February 28, 1969. Section 75(2) of the Act provides that the statutes, ordinances, rules and byelaws in force immediately before the commencement of the Act shall, in so far as they are not inconsistent with its provisions, continue to be in force unless they are replaced.

The material provisions of Ordinance 33, Chapter LVII of the Ordinances framed by the Syndicate under section 19(g) are as follows:-

> "33(1) Suspension: The management may at any time place a teacher under suspension where a disciplinary proceedings against him is contemplated or is pending. He shall be paid subsistence allowance and other allowances by the management during the period of suspension at such rates as may be specified by the University in each case. The teacher shall have right to appeal against the order of suspension to the Vice-Chancellor of the University within a period of two months from the date on which he receives the order of suspension.
>
> (2) Nature of penalties: The following penalties may for good and sufficient reasons be imposed on a teacher by the Management:-
>
> (i) Censure.
>
> (ii) Withholding of increment.
>
> (iii) Recovery from pay of any pecuniary loss caused to the institution/monetary value equivalent to the amount of increment ordered to be withheld.
>
> (iv) Reduction to a lower rank in the seniority list or to a lower grade or post.
>
> (v) Dismissal from service.

The Management shall be the Disciplinary Authority in imposing the penalties.

X X X X X X X X (4) Appeal: A teacher shall be entitled to appeal to the Vice-Chancellor of the University against any order passed by the management in respect of the penalties referred to in items (ii) to (v). Such appeal shall be submitted within a period of 60 days the appellant receives the order of punishment." The expression "conditions of service" covers a wide range, as explained by the Privy Council in N.W.F. Province v. Surai Narain which was approved by this Court in State of U.P. v. Babu Ram. These decisions and also a later decision of this Court in State of M.P. & Ors. v. Shardul Singh have made it clear that the expression conditions of service' includes everything from the stage of appointment to the stage of termination to service and even beyond, and relates to matters pertaining to disciplinary action. Thus, the expression 'conditions of service' as explained in the decisions of the Privy Council and of this Court includes the power to take disciplinary action. The rules regarding these matters are contained in Chapter LVII of the Ordinances. The Management of a private college under Ordinance 33(2) is constituted the appointing and the

disciplinary authority in respect of imposition of punishment. In the course of any disciplinary proceeding, a right of appeal before the Vice-Chancellor is given to a teacher dismissed from service under Ordinance 33(4) of the Ordinances. The High Court thus rightly held that the right of appeal conferred by Ordinance 33(4) forms part of the 'conditions of service' and, therefore, is valid.

The High Court was, however, wrong in two ways. Firstly, it fell into an error in holding that the Vice- Chancellor while exercising the appellate powers under Ordinance 33(4), had not the power to direct reinstatement of a teacher or grant a declaration that his dismissal was wrongful. It also fell into an error in holding that a right of appeal before the Vice-Chancellor given to the teachers of private colleges under Ordinance 33(1) and (4), in the matter of suspension and dismissal, was not violative of the rights of religious minorities under article 30(1) of the Constitution.

Under Ordinance 33(1), a teacher placed under suspension, has a right of appeal against the order of suspension to the Vice-Chancellor. Under Ordinance 33(4), a teacher shall be entitled to appeal to the Vice-Chancellor against any order passed by the management in respect of penalties referred to in items (ii) to (v) of Ordinance 33(2). Merely because a right of appeal is provided without defining the powers of the appellate authority, it cannot be implied that such right does not include the power to direct reinstatement. The conferment of a power to hear an appeal necessarily invests the appellate authority with the power to annul, vary or set aside the order appealed from. Such power is incidental to or is implied in, the power to hear an appeal. It necessarily has the power to grant an appropriate relief. Indeed, the extent of the appellate power under Ordinance 33(4) is not defined. When a teacher is dismissed from service, the Vice-Chancellor can not only direct reinstatement but also modify the nature of Punishment. The whole matter is at large before him.

In V. Rev. Mother Provincial v. State of Kerala (supra) a Full Bench of the Kerala High Court while dealing with section 56(4) of the Kerala University Act, 1969, observed that the right of appeal to the Syndicate, which being a large body comprising of as many as seventeen members will be subject to pulls and pressures, was not a body which could be entrusted with a judicial function of this nature. In that view, it held that sub-section (4) suffers from the defect of the appeal being to a forum which seems to be entirely unsuitable for the purpose, being unreasonable, and so much against the interests of the institution, that it can hardly be justified either as a regulation of, or as a reasonable restriction on the power of the management. Incidentally, it observed:

> "Though the appeal lies not, as one would have expected, to a judicial or quasi-judicial tribunal but to an executive body which, having regard to its composition, would hardly be able to produce what is ordinarily called a speaking order."

The High Court has read more into the Full Bench decision than there is, and from the mere observation that the proper remedy against any abuse of the disciplinary power would be an appeal, seem to assume that a provision like Ordinance 33(4) would not affect the right guaranteed to a minority under Article 30(1), in matters pertaining to discipline. On the contrary, the Full Bench observed:-

> "The Vice-Chancellor can hardly be expected to have the time to deal with such matters, and in any case, the long delay that will necessarily be involved would, by itself render the managing body's powers of disciplinary control largely ineffectual."

It is contended on behalf of the appellant that the right to administer guaranteed by Article 30(1) of the Constitution does not carry with it a 'right to maladminister'. It is urged that while autonomy in administration means right to administer effectively and to manage and conduct the affairs of the institution, the University will always have a right to see that there is no maladministration. If there is maladministration, the University must take steps to cure the same. The right to administer is, therefore to be tampered with regulatory measures to facilitate smooth administration. Regulations which will serve the interests of the students, regulations which will serve the interests of the teachers are of paramount importance under good administration. Regulations in the interest of efficiency of teachers, discipline and fairness in administration are necessary for preserving harmony among affiliated institutions. It is urged that if the State has any role to play in the system of general education, its power cannot be confined merely to the laying down of a prescribed standard of education for minority educational institutions but should also extend to all necessary measures to secure an orderly, efficient and sound administration of such institutions. Once the role of the State in the system of general education is properly understood its regulatory power over the minority educational institutions, it is submitted, would depend upon the nature or type of the educational institutions set up by a minority and all other relevant factors, and no universal or general test can be laid down. The degree of permissive State control must depend upon the circumstances of each case. The right under Article 30(1) forms part of a complex and inter-dependent group of diverse social interests. There cannot be any perpetually fixed adjustment of the right and those social interests. They would need adjustment and readjustment from time to time and in varying circumstances. Undoubtedly, the management of a minority institution could not be displaced by the regulatory measure. But the State has a power to regulate through the agency of the University the service conditions of teachers and to secure a fair procedure in the matter of disciplinary action against them. These safeguards must necessarily result in the security of tenure of teachers and must attract competent and qualified staff and thus could ultimately improve the excellence and efficiency of the educational institution.

It is further urged that the reconciliation of minority rights in education with wider social and educational objectives is inevitably necessary and this involves the judicial task of balancing the guaranteed rights under Article 30(1) with social, national or educational values sought to be regulated or protected by the impugned legislation. It has to be kept in mind that today the education has to be so designed which would subserve not only the well being of the citizens in the intellectual, ethical and financial spheres but would inculcate amongst them a senses of individual and social consciousness to contribute to the welfare and prosperity of an egalitarian society. It is, therefore, urged that Ordinance 33(4). Chapter LVII of the Ordinances farmed by the Syndicate under s.19(j) of the Act is not violative of Article 30(1) as it seeks to ensure justice and fair play to the teachers against arbitrary actions of the management.

It is next urged that the Vice-Chancellor, while exercising his appellate power under Ordinance 33(4) is indeed clothed with the State's inherent judicial power to deal with disputes between the

parties and determine them on the merits, fairly and objectively.

It is urged that the contention that the impugned order passed by the Vice-Chancellor under Ordinance 33(4) affects the fundamental rights of minority religious institutions under Article 30(1), is based on a complete misconception about the true nature and character of judicial process and of judicial decisions. If this basic and judicial aspect of the judicial process is borne in mind, it is submitted, it would be plain that the decision given by the Vice- Chancellor cannot be said to affect the fundamental rights guaranteed under Article 30(1). The remedy for a person aggrieved by the decision of a competent judicial tribunal is to approach for redress a superior tribunal, if there be one.

Lastly it is urged that the rights of the religious and linguistic minorities in respect of their educational institutions, however, liberally construed, cannot be allowed to dominate every other fundamental rights, directive principles of State policy and broad ideals of the Constitution. Article 30(1) enables the minorities to establish and administer educational institutions of their choice but it is said they cannot be entitled to exact unjustifiable preferential or discriminatory treatment for minority institutions so as to obtain benefits but to reject obligations of statutory rights. We fail to see the relevance of these submissions while adjudging the validity of Ordinance 33(1) and (4) in the light of Article 30(1).

The appellant, who appeared in person, supplemented the arguments of the learned counsel appearing as amicus curiae and urged that if the Court does not uphold the powers of the Vice-Chancellor under Ordinance 33(4) it would be tantamount to negation of the State's regulatory power to prevent or cure the abuse of power by the management and throw the teachers to their arbitrary actions without any security of tenure. She urged that the religious, cultural and linguistic minorities though deserve a generous and sympathetic treatment, cannot at the same time be absolved of their obligations to conform to the norms of natural justice and fair employment.

In assailing the view of the High Court, learned counsel for the Management contends that the right of administration of minority educational institutions rests with the Management and the right of appointment, suspension and dismissal of the staff also is part and parcel of the administration. In a private college, the appointing and disciplinary authority is the management. Ordinance 33 relating to the service conditions of teachers in private colleges authorises the management to take any disciplinary proceedings. The University has no power to interfere into the administration of the college or into the disciplinary action taken against a member of the staff. The creation of an appellate authority like the Vice-Chancellor, which is an outside agency, itself is an illegal abridgment of the right of management enshrined in Article 30(1). That apart, directing a dismissed Principal, who is the academic head of the college, to hold office against the wishes of the founders of the college without specific power in that regard, is an anathema to the right of administration guaranteed by Article 30(1) of the Constitution. If the Vice-Chancellor were to have power of reinstatement of a dismissed teacher, the result would be, in effect, appointing a person against the will of the founders of the institution. The conferment of such a power on the Vice- Chancellor is destructive of the right of management. In support of the contention that Ordinance 33(1) and (4) were violative of Article 30(1), reliance was placed on the decision in Ahmedabad St. Xaviers College

Society & Anr. v. State of Gujarat & Anr.

Learned counsel for the interveners contends that the interposition of an outside authority like the Vice- Chancellor, demits the entire disciplinary power of a minority educational institution to the Vice-Chancellor. Under Ordinance 33(4) the Vice-Chancellor has the power to veto its disciplinary control. There is complete interference with the disciplinary power of the minority institution. The State may 'regulate' the exercise of the right of administration, but it has no power to impose any 'restriction' which is destructive of the right itself. In matters relating to discipline, the process of decision must be left to the institution. There is direct interference with this right. The post of principal is of pivotal importance in the life of a college, around whom wheels the tone and temper of the institution, on whom depends the continuity of its traditions, maintenance of discipline and the efficiency of its teaching. The character of the institution depends on the right choice of the principal by the management. The right to choose the principal is perhaps the most important facet of the right to administer a college. In the same way, the right to dispense with the services of the principal is an equally important facet of the same right. The imposition of any trammel, thereon, except to the extent of prescribing the requisite qualifications and the experience or otherwise fostering the interests of the institution itself, cannot but be considered as a violation of the right warranted under Article 30(1).

Learned counsel appearing for the State of Kerala, however, while conceding that conferral of arbitrary and unguided powers on an outside agency like the Vice- Chancellor, would be destructive of the right of management under Article 30(1), contends that the power of the Vice- Chancellor under Ordinance 33(4) to hear an appeal against an order of dismissal does not suffer from this vice. He tries to limit the appellate power of the Vice-Chancellor under Ordinance 33(4) to a case where the action of the management is mala fide or where the order of dismissal is a nullity or where the management has acted in breach of the rules of natural justice. When so read, it is urged, that the conferment of the right of appeal to the Vice-Chancellor in case of disciplinary powers of a minority educational institution, amounts only to a regulation of such power, and, therefore, Ordinance 33(4) is not violative of Article 30(1).

Article 30(1) of the Constitution provides:-

> "30. (1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice."

It is clear beyond doubt that Article 30(1), though couched in absolute and spacious terms in marked contrast with other fundamental rights in Part III, has to be read subject to the regulatory power of the State. Though this Court has consistently recognized this power of the State as constituting an implied limitation upon the right guaranteed under Article 30(1), the entire controversy has centred around the extent of its regulatory power over minority educational institutions.

In re the Kerala Education Bill, 1957(1), S. R. Das, C.J. explained the content of the right under Article 30(1) of the Constitution, in these words:-

> "We have already observed that Article 30(1) gives two rights to the minorities, (1) to establish and (2) to administer educational institutions of their choice. The right to administer cannot obviously include the right to maladminister. The minority cannot surely ask for aid or recognition for an educational institution run by them in unhealthy surroundings, without any competent teachers possessing any semblance of qualification, and which does not maintain even a fair standard of teaching or which teaches matters subversive of the welfare of the scholars. It stands to reason, then, that the constitutional right to administer an educational institution of their choice does not necessarily militate against the claim of the State to insist that in order to grant aid the State may prescribe reasonable regulations to ensure the excellence of the institutions to be aided."

Thus, a contention based on the absolute freedom from State control of the minorities' right to administer their educational institutions was expressly negatived in this case. The Court clearly laid down a principle, namely, a regulation, which is not destructive or annihilative of the core or the substance of the right under Article 30(1), could legitimately be imposed.

The right of a minority community to establish and administer educational institutions of their choice was subject matter of decision by this Court in more than one case.

In Rev. Sidhajbhai Sabhai v. State of Bombay, Shah J. (as he then was) speaking for the Court, negatived an argument advanced on behalf of the State that a law could not be deemed to be unreasonable unless it was totally destructive or annihilative of the right under Article 30(1), stating:

> "The right established by Art. 30(1) is a fundamental right declared in terms absolute. Unlike the fundamental freedoms guaranteed by Art. 19, it is not subject to reasonable restrictions. It is intended to be a real right for the protection of the minorities in the matter of setting up of educational institutions of their own choice. The right is intended to be effective and is not to be whittled down by so-called regulative measures conceived in the interest not of the minority educational institution, but of the public or the nation as a whole. If every order which while maintaining the formal character of a minority institution destroys the power of administration is held justifiable because it is in the public or national interest, though not in its interest as an educational institution, the right guaranteed by Art. 30(1) will be but a 'teasing illusion', a promise of unreality."

The learned Judge then went on to say:

> "Regulation which may lawfully be imposed either by legislative or executive action as a condition of receiving grant or of recognition must be directed to making the institution while retaining its character as a minority institution effective as an educational institution. Such regulation must satisfy a dual test-the test of reasonableness, and the test that it is regulative of the educational character of the

> institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it."

Unlike Article 19(1) the fundamental freedom under Article 30(1) is absolute in terms; it is not made subject to any reasonable restrictions of the nature the fundamental freedoms enunciated in Article 19 may be subjected to. All minorities, linguistic or religious, have by Article 30(1) an absolute right to establish and administer educational institutions of their choice; and any law or executive direction which seeks to infringe the substance of that right under Article 30(1) would to that extent be void.

The extent of the regulatory power of the State was explained by Shah J., thus :

> "This, however, is not to say that it is not open to the State to impose regulations upon the exercise of this right.
>
> The fundamental freedom is to establish and to administer educational institutions : it is a right to establish and administer what are in truth educational institutions, institutions which cater to the educational needs of the citizens, or sections thereof. Regulation made in the true interests of efficiency of instruction, discipline, health, sanitation, morality, public order and the like may undoubtedly be Imposed. Such regulations are not restrictions on the substance of the right which is guaranteed; they secure the proper functioning of the institution, in matters educational."

In Rev. Father W. Proost & Ors. v. The State of Bihar & Ors.(1) Hidayatullah C.J. while dealing with Articles 29(1) and 30(1), said :

> "In our opinion, the width of Article 30(1) cannot be cut down by introducing in it considerations on which Art. 29(1) is based. The latter article is a general protection which is given to minorities to conserve their language, script or culture. The former is a special right to minorities to establish educational institutions of their choice. This choice is not limited to institution, seeking to conserve language, script or culture and the choice is not taken away if the minority community having established an educational institution of its choice also admits members of other communities. That is a circumstance irrelevant for the application of Article 30(1) since no such limitation is expressed and none can be implied, although it is possible that they may meet in a given case."

Incidentally, in dealing with the right under Article 30(1) and the extent of the State's power of regulatory control of such right, this Court in State of Kerala v. V. Rev. Mother Provincial observed:

> "Administration means 'management of the affairs' of the institution. This management must be free of control so that the founders or their nominees can mould the institution as they think fit, and in accordance with their ideas of how the interests of the community in general and the institution in particular will be best

> served. No part of this management can be taken away and vested in another body without an encroachment upon the guaranteed right. There is, however, an exception to this and it is that the standards of education are not a part of management as such. These standards concern the body politic and are dictated by considerations of the advancement of the country and its people. Therefore, if universities establish syllabi for examinations they must be followed, subject however to special subjects which the institutions may seek to teach, and to a certain extent the State may also regulate the conditions of employment of teachers and the health and hygiene of students. Such regulations do not bear directly upon management as such although they may indirectly affect it. Yet the right of the State to regulate education, educational standards and allied matters cannot be denied. The minority institutions cannot be allowed to fall below the standards of excellence expected of educational institutions, or under the guise of exclusive right of management, to decline to follow the general pattern. While the management must be left to them, they may be compelled to keep in step with others."

Projection of the minorities is an article of faith in the Constitution of India. The right to the administration of institutions of minority's choice enshrined in Article 30(1) means 'management of the affairs' of the institution. This right is, however, subject to the regulatory power of the State. Article 30(1) is not a charter for maladministration; regulation, so that the right to administer may be better exercised for the benefit of the institution is permissible; but the moment one goes beyond that and imposes, what is in truth, not a mere regulation but an impairment of the right to administer, the Article comes into play and the interference cannot be justified by pleading the interests of the general public; the interests justifying interference can only be the interests of the minority concerned.

The conferment of a right of appeal to an outside authority like the Vice-Chancellor under Ordinance 33(4) takes away the disciplinary power of a minority educational authority. The Vice-Chancellor has the power to veto its disciplinary control. There is a clear interference with the disciplinary power of the minority institution. The State may 'regulate' the exercise of the right of administration but it has no power to impose any 'restriction' which is destructive of the right itself. The conferment of such wide powers on the Vice-Chancellor amounts in reality, to a fetter on the right of administration under Article 30(1). This, it seems to us, would so affect the disciplinary control of a minority educational institution as to be subversive of its constitutional rights and can hardly be regarded as a 'regulation' or a 'restriction' in the interest of the institution.

In St. Xaviers College v. Gujarat (supra) a Bench of nine Judges, by a majority of seven to two, held that clauses (b) of sub-sections (1) and (2) of s. 51A of the Gujarat University Act, 1949 were violative of Article 30(1). Section 51A(1)(b) enacts that no member of the teaching, other academic and non-teaching staff of an affiliated college shall be dismissed or removed or reduced in rank except after an enquiry in accordance with the procedure prescribed in clause (a) and the penalty to be inflicted on him is approved by the Vice-Chancellor or any other officer of the University authorised by the Vice- Chancellor in this behalf. Similarly, clause (b) of sub- section (2) requires that such termination should be approved by the Vice-Chancellor or any officer of the University authorised

by the Vice-Chancellor in this behalf.

It was argued that the requirement that such termination must be with the approval of the Vice-Chancellor, creates a fetter in matters relating to disciplinary control over the members of the teaching and non-teaching staff. The approval by the Vice-Chancellor, it was said, may be intended to be a check on the administration but there were no guidelines provided and, therefore, clauses (b) of sub-section (1) and (2) of section 51A cannot be said to be a permissive regulatory measure. These contentions were upheld by the majority.

While seven Judges who constituted the majority upheld the provisions of clauses (a) of sub-section (1) and (2) of section 51A, as they provided for a reasonable opportunity of showing cause against a penalty to be imposed as being 'regulatory', they held that clauses (b) of sub-sections (1) and (2) of section 51A of the Act, which confer a blanket power on the Vice-Chancellor to interfere with the disciplinary control of the management of a minority educational institution over its teachers, make a serious inroad on the right of the minority to administer an educational institution guaranteed under Article 30(1).

To appreciate the point involved, we may refer to certain passages of the judgment. In dealing with the question, Ray C.J., with whom Palekar, J. agreed, observed:

> "In short, unlimited and undefined power is conferred on the Vice-Chancellor. The approval of the Vice-Chancellor may be intended to be a check on the administration. The provision contained in section 51A, clause (b) of the Act cannot be said to be a permissive regulatory measure inasmuch as it confers arbitrary power on the Vice-Chancellor to take away the right of administration of the minority institutions. Section 51A of the Act cannot, therefore, apply to minority institutions."

The provision for approval of the Vice-Chancellor was held to be bad because it acted as a check on administration. Further, it was held to confer arbitrary powers on the Vice-Chancellor because there was no guidelines on the basis of which the Vice-Chancellor could withhold his approval.

Jaganmohan Reddy J., speaking for himself and for Alagiriswami J. agreed with the opinion of Ray C.J.

In explaining the extent of regulatory control, Khanna J. stated :

> "Although disciplinary control over the teachers of a minority educational institution would be with the governing council, regulations, in any opinion, can be made for ensuring proper conditions of service of the teachers and for securing a fair procedure in the matter of disciplinary action against the teachers. Such provisions which are calculated to safeguard the interest of teachers would result in security of tenure and thus inevitably attract competent persons for the posts of teachers. Such a provision would also eliminate a potential cause of frustration amongst the teachers. Regulations made for this purpose should be considered to be in the interest of

minority educational institutions and as such they would not violate article 30(1)."

He accordingly upheld the validity of clause (a) stating :

"Clause (a) of sub-sections (1) and (2) of section 51A of the impugned Act which make provision for giving a reasonable opportunity of showing cause against a penalty to be proposed on a member of the staff of an educational institution would consequently be held to'be valid."

But he held clause (b) to be invalid saying :

"Clause (b) of those sub-sections which gives a power to the Vice-Chancellor and officer of the University authorised by him to veto the action of the managing body of an educational institution in awarding punishment to a member of the staff, in my opinion, interfere with the disciplinary control of the managing body over its teachers. It is significant that the power of approval conferred by clause (b) in each of the two sub-sections of section 51A on the Vice- Chancellor or other officer authorised by him is a blanket power. No guide lines are laid down for the exercise of that power and it is not provided that the approval is to be withheld only in case the dismissal, removal, reduction in rank or termination of service is mala fide or by way of victimisation or other similar cause. The conferment of such blanket power on the Vice-

Chancellor or other officer authorised by him for vetoing the disciplinary action of the managing body of an educational institution makes a serious inroad on the right of the managing body to administer an educational institution. Clause (b) of each of the two sub-sections of section 51A should, therefore, be held to be violative of article 30(1) so far as minority educational institutions are concerned."

It was held that clause (b) interferes with the disciplinary control of the managing body over its teachers. The provision does not restrict its operation in cases of mala fides or victimisation, etc. In other words, the power of the Vice-Chancellor was complete. He could refuse his approval on facts, that is to say, on reaching a conclusion that the action of the management was improper or invalid.

Mathew J., speaking for himself and one of us, Chandrachud J. (as he then was) observed :

"It was argued for the petitioners that clause (1)(b) of s.51A has the effect of vesting in the Vice-

Chancellor a general power of veto on the right of the management to dismiss a teacher. The exact scope of the power of the Vice-Chancellor or of the office of the University authorised by him in this sub-section is not clear. If the purpose of the approval is to see that the provisions of sub-section 51A(1) (a) are complied with, there can possibly be no objection in lodging the power of approval even in a nominee of the Vice- Chancellor. But an uncanalised power without any guideline to

withhold approval would be a direct abridgement of the right of the management to dismiss or remove a teacher or inflict any other penalty after conducting an enquiry."

The Learned Judge then proceeded to observe:

> "The relationship between the management and a teacher is that of an employer and employee and it passes one's understanding why the management cannot terminate the services of a teacher on the basis of the contract of employment. Of course, it is open to the State in the exercise of its regulatory power to require that before the services of a teacher are terminated, he should be given an opportunity of being heard in his defence. But to require that for terminating the services of teacher after an inquiry has been conducted, the management should have the approval of an outside agency like the Vice-Chancellor or of his nominee would be an abridgement of its right to administer the educational institution. No guidelines are provided by the legis-
>
> lature to the Vice-Chancellor for the exercise of his power. The fact that the power can be delegated by the Vice-Chancellor to any officer of the University means that any petty officer to whom the power is delegated can exercise a general power of veto. There is no obligation under the sub-sections (1)(b) and 2(b) that the Vice Chancellor or his nominee should give any reason for disapproval. As we said a blanket power without any guideline to disapprove the action of the management would certainly encroach upon the right of the management to dismiss or terminate the services of a teacher after an enquiry."

He was of the opinion that such a provision constitutes a direct abridgement of the right of the management to dismiss or remove a teacher or inflict any other penalty, after conducting an enquiry.

Dissenting two of the other Judges, namely Beg, and Dwivedi, J. struck a discordant note. Beg J. (as he then was) observed:

> "Section 51A of the Act appears to me to lay down general conditions for the dismissal, removal, reduction in rank and termination of services of members of the staff of all colleges to which it applies. Again, we have not to consider here either the wisdom or unwisdom of such a provision or the validity of any part of section 51A of the Act on the ground that it violates any fundamental right other than the ones conferred by Art. 30(1) of the Constitution."

Dwivedi J. stated:

> "The purpose of s. 51A is to check this kind of misuse of the right to fire an employee. So the Vice- Chancellor's power of approval is not unguided and unreasonable. After the Chancellor, the Vice-Chancellor is the next highest officer of the University. It

should be presumed that in granting or withholding approval 'he would act according to reason and justice'.

When the matter goes before the Vice-Chancellor for approval, both the management and the teacher or the member of the non-teaching staff should be heard by him. Hearing both parties is necessarily implied, because without hearing either of them it will be difficult for him to make up his mind whether he should grant or withhold approval to the action proposed by the managing body of the educational institution. It would also follow that while granting approval or disapproval, the Vice-Chancellor should record reasons, for the exercise of his power is subject to control by courts. The statute does not make his order final, and courts would surely nullify his order if it is arbitrary, mala fide or illegal."

An analysis of the judgments in St. Xaviers College's case (supra) clearly shows that seven out of nine Judges held that the provisions contained in clauses (b) of sub- sections (1) and (2) of section 51A of the Act were not applicable to an educational institution established and managed by religious or linguistic minority as they interfere with the disciplinary control of the management over the staff of its educational institutions. The reasons given by the majority were that the power of the management to terminate the services of any member of the teaching or other academic and non-academic staff was based on the relationship between an employer and his employees and no encroachment could be made on this right to dispense with their services under the contract of employment, which was an integral part of the right to administer, and that these provisions conferred on the Vice-Chancellor or any other officer of the University authorised by him, uncanalised, unguided and unlimited power to veto the actions of the management. According to the majority view, the conferment an such blanket power on the Vice-Chancellor and his nominee was an infringement of the right of administration guaranteed under Art. 30(1) to the minority institutions, religious and linguistic. The majority was accordingly of the view that the provisions contained in clauses (b) of sub-sections (1) and (2) of section 51A of the Act had the effect of destroying the minority institutions disciplinary control over the teaching and non-teaching staff of the college as no punishment could be inflicted by the management on a member of the staff unless it gets approval from an outside authority like the Vice-Chancellor or an officer of the University authorised by him. On the contrary, the two dissenting Judges were of the view that these provisions were permissive regulatory measures.

The power of appeal conferred on the Vice-Chancellor under Ordinance 33(4) is not only a grave encroachment on the institution's right to enforce and ensure discipline in its administrative affairs but it is uncanalised and unguided in the sense that no restrictions are placed on the exercise of the power. The extent of the appellate power of the Vice-Chancellor is not defined; and, indeed, his powers are unlimited. The grounds on which the Vice-Chancellor can interfere in such appeals are also not defined. He may not only set aside an order of dismissal of a teacher and order his reinstatement, but may also interfere with any of the punishments enumerated in items-

(ii) to (v) of Ordinance 33(2); that is to say, he can even interfere against the infliction of minor punishments. In the absence of any guidelines, it cannot be held that the power of the

Vice-Chancellor under ordinance 33(4) was merely a check on maladministration.

As laid down by the majority in St. Xaviers College's case (supra), such a blanket power directly interferes with the disciplinary control of the managing body of a minority education institution over its teachers. The majority decision in St. Xaviers College's case squarely applies to the facts of the present case and accordingly it must be held that the impugned Ordinance 33(4) of the University of Kerala is violative of Article 30(1) of the Constitution. If the conferment of such power on an outside authority like the Vice-Chancellor, which while maintaining the formal character of a minority institution destroys the power of administration, that is, its disciplinary control, is held justifiable because it is in the public and national interest, though not in its interest as an educational institution, the right guaranteed by Article 30(1) will be, to use the well-known expression, a 'testing illusion', a 'promise of unreality'.

A distinction is, however, sought to be drawn between the provisions contained in clauses (b) of sub-section (1) and (2) of section 51A of the Gujarat University Act, 1949 which provided that no penalty could be inflicted on a member of the teaching staff without the prior approval of the Vice-Chancellor or his nominee, and that contained in Ordinance 33(4) which confer on the Vice-Chancellor the power to hear an appeal against an order of dismissal. It is said that while a provision making the prior approval of the Vice-Chancellor a condition precedent against dismissal, removal or reduction in rank of an employee creates a fetter on the exercise of a disciplinary control, which the employer undoubtedly has, the provision conferring on the Vice-Chancellor a power to hear an appeal leaves the power of the employer untouched. We are afraid, the distinction tried to be drawn is without any basis.

We must, accordingly, hold that Ordinance 33(4), Chapter LVII of the ordinances framed by the Syndicate of the University under section 19(J) of the Kerala University Act, 1969 would not be applicable to an educational institution established and managed by a religious or linguistic minority like St. Joseph's Training College for Women, Ernakulam.

Incidentally, the Kerala University Act, 1969 has been repealed by the Kerala University Act, 1974, which has come into force with effect from August 18, 1974. Section 65 of that Act confers power on the Government to constitute an Appellate Tribunal. Any teacher aggrieved by an order in any disciplinary proceedings taken against him may under section 60(7) appeal to the Appellate Tribunal and the Appellate Tribunal may, after giving parties an opportunity of being heard, and after such further inquiry as may be necessary, pass such orders thereon as it may deem fit, including an order of reinstatement of the teacher concerned. Section 61 of the Act provides that (i) pending disputes between the management of a private college and any teacher relating to the conditions of service are to be decided under and in accordance with the provision the Act, and (ii) past disputes of such nature which have arisen after August 1, 1967, and had been disposed of before the commencement of the Act, shall, if the management or the teacher applies to the Appellate Tribunal in that behalf within thirty days of the commencement of the Act, be reopened and decided in accordance with the provisions of the Act. We have been informed that the appellant has filed an appeal before the Appellate Tribunal, Kerala under section 61 (a) of the Kerala University Act, 1974. We refrain from making any observation with regard to that appeal. We wish to say that the validity

of sections 60(7), 61 and 65 was not in question before us, and so we express no opinion in regard thereto.

The result, therefore, is that the appeals fail and are dismissed. The judgment of the High Court setting aside the two orders of the Vice-Chancellor of the University of Kerala dated October 19, 1970, is upheld though on a different ground, namely, the Vice-Chancellor under Ordinance 33(1) and (4) had no power to entertain the appeals from the impugned orders of dismissal or suspension of the appellant. The costs shall be borne by the parties throughout as incurred.

We are thankful to Sri M. K. Ramamurthi, who appeared as an amicus curiae for the appellant, for the able assistance he has rendered.

P.H.P. Appeals dismissed.