

CASE NO.:
Appeal (civil) 9595 of 2003

PETITIONER:
Committee of Management Kanya Junior High School Bal Vidya Mandir, Etah, U.P.

RESPONDENT:
Sachiv, U.P. Basic Shiksha Parishad Allahabad, U.P. & Others

DATE OF JUDGMENT: 21/08/2006

BENCH:
S. B. SINHA & DALVEER BHANDARI

JUDGMENT:
J U D G M E N T

DALVEER BHANDARI, J.

This appeal is directed against the judgment and order dated 10.4.2003 passed by the High Court of Judicature at Allahabad in Civil Writ Petition No. 15255 of 2003.

Respondent no. 3 Smt. Santosh Upadhyay was working as an Assistant Teacher in the Kanya Junior High School Bal Vidya Mandir, Etah. A letter dated 8.9.2001 in the form of a show-cause-notice was sent to respondent no. 3 by the Principal of the school directing her to stop her acts of indiscipline. The letter dated 8.9.2001 reads as under:

"(Minority Institution)
G. Jr. High School Bal Vidya Mandir, Etah
(Permanently Recognized from Government for the
Class from Nursery to VIIIth)

From :
Principal

To:
Smt. Santosh Upadhyay, Asstt. Teacher, G. Jr. H.
School, Bal Vidya Mandir, Etah

Dated: 8.9.2001

Subject: Regarding indiscipline etc.

Madam,

You are not complying with the following instructions despite number of oral as well as written orders:-

1. Refusal to sign on the Order Register and on other information etc.
2. Laxity in teaching work.
3. Non performing the duties of your charge.
4. Use of indecent language and shouting for giving reply.
5. Using caste related words to spoil the

atmosphere.

6. Instigating other teachers and provoking them to neglect their duties.

7. Non-cooperation in the development of school and increasing the number of students.

8. Threats to me (Principal) for dire consequences, in my office and also giving threats on my residential telephone through other unsocial elements.

I hereby give you this last warning to improve your attitude and work as a model teacher. Please note that earlier also your services had been terminated because of such type of your attitude and you had been reinstated in the service after your apologizing and you had assured that you will never repeat such mistakes and indiscipline in future.

Therefore, being the Principal of School, I advise you to stop these acts of indiscipline and work as a model teacher.

Yours faithfully,

Sd/-

(Smt. Kusum Sharma)

Principal

G. Jr. High School, Bal Vidya Mandir, Etah

Copy forwarded to following for information and necessary action:-

1. Manager, G. Jr. H. School, Bal Vidya Mandir, Etah

2. District Basic Education Officer, Etah

Sd/-

(Smt. Kusum Sharma)

Principal

G. Jr. High School, Bal Vidya Mandir, Etah"

The appellant did not receive any satisfactory reply from respondent no. 3 and on 24.9.2001 a suspension order was passed. The suspension order dated 24.9.2001 reads as under:

"G. Jr. High School Bal Vidya Mandir, Etah (Permanently Recognized from Government for the Class from Nursery to VIIIth)

From :

Manager

To:

Smt. Santosh Upadhyaya, Asstt. Teacher, G. Jr. H. School, Bal Vidya Mandir, Etah

Dated: 24.9.2001

O R D E R

Consequent upon not receiving the satisfactory reply for the following charges, Smt. Santosh Upadhyaya, A.T., Girls Junior High School, Bal Vidya Mandir, Etah is placed

under suspension with immediate effect. The charge-sheet will be issued after the detailed enquiry, within two week's period.

1. Refusal to sign on the Order Register and on other information etc.
2. Laxity in teaching work.
3. Non-performing the duties of your charge.
4. Use of indecent language and shouting for giving reply.
5. Using caste related words to spoil the atmosphere.
6. Instigating other teachers and provoking them to neglect their duties.
7. Non-cooperation in the development of school and increasing the number of students.
8. Threats to the Principal for dire consequences and also giving threats on her residential telephone through other unsocial elements.

During the period of suspension, you will be entitled to get Subsistence Allowance according to the Rule 53 of Financial Hand Book Part 2 (Part 2 to 4). During the period of suspension, you will remain attached with S.K.S. Girls Junior High School, Etah.

Sd/-
(Dev Rishi Jain)
G. Jr. High School, Bal Vidya Mandir, Etah

Endst. No. 1-5/2001-2002 Dated: 24.9.2001

Copy forwarded to following for information and necessary action:-

1. Smt. Santosh Upadhyaya, A.T., G. Jr. High School, Bal Vidya Mandir, Etah.
2. District Basic Education Officer, Etah \026 for information.
3. Account Officer, Finance & Accounts Basic Education, Etah
4. Smt. Kusum Sharma, Principal, Bal Vidya Mandir, Etah.
5. Guard File.

Sd/-
(Dev Rishi Jain)
G. Jr. H. School, Bal Vidya Mandir, Etah.
24.9.2001"

On 17.10.2001, the Manager, G. J. High School, Bal Vidya Mandir, Etah received a letter from the District Basic Education Officer, Etah indicating that for a minority institution there is no requirement of prior approval for

imposing penalty on Assistant Teachers from the District Basic Education Officer. The letter dated 17.10.2001 reads as under:

"Office of the District Basic Education Officer,
Etah

No. 3381-82

Dated: 17.10.2001

The Manager, G. J. High School,
Bal Vidya Mandir, Etah.

As per Govt. Order No. 1091/15.6.95 dated 14th July, 1995 in the matters of penalty to the Assistant Teachers and Principals of Recognized Junior High School, there is no requirement of prior approval from the District Basic Education Officer, therefore, in view of these provisions, the order No. B.S. /Sus./3196/2001-2002 dated 10.10.2001 issued by the undersigned regarding re-instatement of Smt. Santosh Upadhyaya, Assistant Teacher (Under Suspension) is hereby cancelled, and it is decided that no interference will be made in the enquiry proceedings till the final disposal by Manager. This School has been recognized as Minority Institution and as per departmental rules, I have no right to interfere in its matters and as per Govt. orders, the decision taken by the Manager shall be acceptable to all.

Sd/-

(Tilak Singh Rajput)

District Basic Education Officer, Etah.

Endst. No. /2001-2002 even date

1. Copy to \026 Smt. Santosh Upadhyaya, Assistant Teacher (Under Suspension), G. J. High School, Bal Vidya Mandir, Etah \026 for information.

Sd/-

(Tilak Singh Rajput)

District Basic Education Officer, Etah."

The appellant institution, namely Kanya Junior High School Bal Vidya Mandir, was established and administered by the Jain community which has been recognized as a minority community. In this School education is imparted up from Nursery to standard VIII. An enquiry was conducted and after receiving the enquiry report from the Enquiry Officer, meeting of the Managing Committee was called on 9.11.2001 which was attended by all the members of the Managing Committee. The enquiry report and reply to the show cause notice were considered. The charges levelled against respondent no. 3 were unanimously proved. In the interest of the institution and its good reputation, respondent no. 3 was removed from the service of the school. The order of termination dated 10.11.2001 reads as under:

"From: Manager,
G. J. High School,
Bal Vidya Mandir, Etah.

To: Smt. Santosh Upadhyaya,

Assistant Teacher (Under
Suspension)
G. J. High School, Bal Vidya
Mandir, Etah.

No. 18-20/2001-2002 Dated: 10.11.2001

Subject: Order of Termination from service.

Madam,

After the submission of the Enquiry Report by the Enquiry Officer regarding suspension of Smt. Santosh Upadhyaya, meeting of Managing Committee was called on 9.11.2001 and formal resolution was passed as per rules and all the members of Managing Committee and Principal attended this meeting. The Enquiry Report and explanation (Show Cause Notice) were considered carefully and thereafter it has been decided unanimously that the charges levelled against Smt. Santosh Upadhyaya, on the basis of statements and evidence, have been found fully proved. These cannot be considered as wrong in any manner. It would be in the interest of school and its reputation that Smt. Upadhyaya be removed from the services of this School. Therefore, notice of termination from service may be sent to her and competent officer may also be informed on this subject.

1. After receiving the report of District Basic Education Officer regarding your in-disciplinary activities in the School, your one annual increment had been stopped. This annual increment had been stopped w.e.f. 1st January, 2001 and the above said Basic Education Officer had been transferred from this District in June, 2001. During this period of 6 months, you never made any application regarding stopping of this annual increment, reasons of which are best known to you. It shows that you were very well aware that the annual increment has been stopped on your non-complying with the department rules and you had no sufficient evidence against these charges, therefore, above said charges are found proved against you.

2. A charge sheet had been issued to you by the undersigned, vide letter No. 7-3-2001/2002 dt. 1.10.2001 regarding your working style against the interests of school, but you did not submit any evidence with your reply to the said charge sheet. It is thus clear that you have admitted the charge Nos. 6, 7, 8, 9 because you have not submitted any evidence regarding these charges.

3. The Enquiry Officer, vide his letter dated 10.10.2001 had issued to you the

evidence related to the charge, but instead of producing any evidence or document in this regard, you only made allegations against the Principal, other teachers and the management. In the show cause notice vide letter dated 26.9.2001, you had been charged with the charge of character assassination of undersigned Manager, for which you have neither submitted any evidence nor your explanation.

As far as the question of your orders of reinstatement issued by the District Basic Education Officer vide his letter dated 10.10.2001 is concerned, the same has been considered ex-parte and beyond his jurisdiction, therefore, the same have been cancelled vide his letter No. 3381-82 dated 17.10.2001.

In his second decision, it has been admitted by the District Basic Education Officer that this School is of 'Minority Community' and he should have not interfered in its matter. As far as your statement, that it is not a Minority Community's school, is concerned, it is not within your competency, you have worked as a Teacher and it is not within your competency to challenge the rules, regulations and government orders related to this School. It is a matter of gross indiscipline on your part. The allegations made by you regarding fees etc. are baseless and beyond the facts. It has been found fully proved that you have misappropriated the funds of students fee and used the same for personal interests.

In this manner, you have failed to submit any evidence and documents with regard to charges levelled against you in the show cause notice on the basis of that your matter should have been reviewed.

In the absence of same, the reply to show cause notice received from you within the stipulated time, is not satisfactory and in these circumstances, there is no justification to keep you in service of this School. Consequent upon your failing to submit an appropriate evidence and document before the undersigned, despite the sufficient opportunities to explain, your services are terminated with immediate effect.

Yours faithfully,

Sd/-

(Dev Rishi Jain)

Manager

G. Jr. High School, Bal Vidya Mandir,

Etah.

Copy to: - For information \026

1. District Basic Education Officer, Etah
2. Finance and Accounts Officer \026 Basic Education, Etah

Sd/-

(Dev Rishi Jain)

Manager

G. Jr. High School, Bal Vidya Mandir,
Etah."

Respondent no. 3 challenged the order of termination dated 10.11.2001 before the High Court of Judicature at Allahabad by filing a writ petition, which was decided by the learned Single Judge on 7.12.2001.

A preliminary objection was raised on behalf of the appellant that in view of the provisions of Rule 16 of the Uttar Pradesh Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Services of Teacher) Rules, 1978, the provisions of Rule 16 are applicable to the teachers and Headmaster of the institution run by Basic Shiksha Parishad and according to 1978 Rules order of termination, dismissal or removal is an appealable order.

The learned Single Judge accepted the preliminary objection regarding availability of alternate remedy and declined to interfere with the termination order dated 10.11.2001 and dismissed the Writ Petition.

Respondent no. 3, aggrieved by the order of the learned Single Judge, preferred a Special Appeal before a Division Bench of the High Court of Judicature at Allahabad. It was incorporated in the said order of the Division Bench that respondent no. 3's services were terminated after holding an enquiry by the Managing Committee by an order dated 10.11.2001. The grievance of respondent no. 3 was that the order passed by the Managing Committee was without taking approval from the District Basic Education Officer, therefore, the order of termination dated 10.11.2001 is a nullity and that the learned Single Judge had committed a serious error in dismissing the writ petition.

The learned counsel appearing for the appellant institution specifically submitted before the Single Judge that the appellant is a minority institution being run by the Jain Community and has been recognized as such. Therefore, there was no requirement for obtaining prior approval of the District Basic Education Officer before terminating the services of respondent no. 3. The counsel appearing for the appellant had drawn the attention of the learned Single Judge about the order which was passed way back as on 25.8.1976 by the concerned authorities that the appellant institution was a minority institution. The order dated 25.8.1976 reads as follows:

"Office of the District Inspector of School, Etah

Order No. B.S.P./11264/76-77 Dt. 25.8.1976

O R D E R

On the basis of recommendations dated 27.7.1976, District Basic Education Officer Girls Junior High School, Bal Vidya Mandir, Etah is declared a Minority Institution under Regulation 11 for the Recognized Basic School (Recruitment and Conditions of Service of Teacher's and other Conditions) Rule, 1975, notified on 20.5.1975 because this Institution is being established and managed by minority category mentioned under Article 30(1) of the Constitution.

Sd/-

(Ram Prakash Singh)
District Inspector of School, Etah

No. B.E.P./11264/76-77 even date

Copy forwarded to following for information & necessary action please:-

1. District Basic Education Officer, Etah \026
With reference to his office letter No. CA-4404/12/B.R.D. Minority/76-77 dated. 27.7.76.
 2. Manager Girls Junior High School, Bal Vidya Mandir, Etah.
 3. Dy. Director of Education, Region-II, Agra.
 4. Regional Inspector of Girls School Region-II, Agra.
 5. Director of Education, U.P. Peerpur House, Tilak Marg, Lucknow.
- Sd/-
(Ram Prakash Singh)
District Inspector of School, Etah"

Rule 11 of the Uttar Pradesh Recognized Basic School (Recruitment and Conditions of Service of Teachers and Other Conditions) Rules, 1975 reads as under:

"11. Dismissal and Removal of Teachers.\027
No order dismissing, removing or terminating the services of a teacher or other employee of a recognized school shall be passed save with the prior approval in writing of the Basic Shiksha Adhikari:

Provided that in case of recognized schools established and administered by minority referred to in clause (1) of Article 30 of the Constitution, such an order shall not require the approval of the Basic Shiksha Adhikari but shall be reported to him."

It may be pertinent to mention that a letter dated

7.3.2003 sent by the District Inspector of School, Etah to the Basic Education Officer, Etah regarding verification of the Girls Junior High School Bal Vidya Mandir, Etah Minority Institution is as under:

"From,
District Inspector of School, Etah.

To,
To Basic Education Officer, Etah.

Letter No. /2002-03 Dated 7.3.2003

Sub: In regard to verification of Girls
Junior High School Bal Vidya
Mandir, Etah Minority Institution.

Sir,

In the above matter kindly peruse your office letter B.S. 7493/2002-03 dated 24.2.2003.

In the regard by this office 2.9.2002, the position is made clear, where as the then District Inspector of School, Etah in accordance with the then Rules was competent authority to declare the aforementioned School as Minority Institution or not? It is informed in this regard, as per para 3 under heading "Minority Institution" of Madhyam 10, photo copy of the same is enclosed the then District Inspector of School was Competent Authority to decide the Minority Institution.

Please be aware accordingly and take necessary action.

Sd/-
7.3.2003
(K. N. Kanaujiya)
District Inspector of School, Etah.

Enclosed: As above."

According to the appellant institution, it is clearly mentioned that the District Basic Education Officer was competent to decide regarding minority status of the institution. The Division Bench of the Allahabad High Court in Special Appeal 1207/2001, after hearing the parties, observed as under:

"The institution has been accorded the status of a minority institution thus no prior approval of the District Basic Education Officer for terminating the services of a teacher in a minority institution is required to be taken in view of the proviso to Rule 15 of the 1978 Rules."

The appeal filed by respondent no. 3 was dismissed by an order dated 13.11.2002.

In subsequent proceedings in Writ Petition No. 1525 of 2003, the learned Single Judge of the Allahabad High Court on 10.4.03, while altogether ignoring the said judgment of the

Division Bench of the same Court in the Special Appeal No. 1207 of 2001, (by which he was bound), had observed in the judgment that in a Special Appeal the Court had not considered the question regarding the minority status of the institution. This observation of the learned Single Judge is wholly untenable.

The approach adopted by the learned Single Judge in this case is against the settled principle of law. Law is consistent and clear that the Single Judge of the High Court is bound by the decision of the Division Bench.

In support of the view taken by the Division Bench adequate material exists. We deem it proper to recapitulate references to the decided cases and other relevant material.

The Government of Madhya Pradesh, by a notification dated 29.5.2001, declared the Jain community in the State of Madhya Pradesh as a minority community.

The Founding Fathers of the Constitution had unequivocally recognized the Jains as a minority community as is evident from the proceedings of the Constituent Assembly. While keeping in view that the Jains are a minority community, a representative of the Jain community was taken in the Minority Advisory Committee of the Constituent Assembly.

On 3rd September, 1949, while addressing a public meeting at Allahabad, the first Prime Minister of India, Shri Jawahar Lal Nehru said. We quote a few lines from the said speech \026

"No doubt India has a vast majority of Hindus, but they could not forget the fact that there were also minorities \026 Muslims, Parsis, Christians, Sikhs and Jains. If India was understood as a Hindu Rashtra, it meant that the minorities were not cent percent citizens of this country."

The said speech was reported in the English daily newspaper 'The Statesman' dated 5.9.1949.

On 31st January, 1950, the PPS to the then Prime Minister of India sent a letter to the Jain Deputation on behalf of the then Prime Minister, which reads as under:

"With reference to the deputation of certain representatives of the Jains, who met the Prime Minister on the 25th January, 1950, I am desired to say that there is no cause whatever for the Jains to have any apprehensions regarding the future of their religion and community. Your deputation drew attention to Article 25, explanation II of the Constitution. This explanation only lays down a rule of construction for the limited purpose of the provision in the article and as you will notice, it mentions not only of Jains but also Buddhists and the Sikhs. It is clear therefore, there is no reason for thinking that Jains are considered as Hindus. It is true that Jains in some ways closely linked to Hindus and have many customs in common, but there can be no doubt that they are a distinct religious community and constitution does not in any way affect this well recognized position.

Yours faithfully,

Sd.
A. V. Pai
Principal Private Secretary
to the Prime Minister"

Dr. S. Radhakrishnan, the former President of India, in his celebrated book "Indian Philosophy Vol I" mentioned as under:

"The Bhagawat Purana endorses the view that Rishbhadeva was the founder of Jainism. There is evidence to show that so far back as the first century B.C. there were people who were worshipping Rishabhadeva, the first Tirthankara. There is no doubt that Jainism prevailed even before Vardhamana Mahaveera or Parsvanatha. The Yajurveda mentions the names of three Tirthankaras-Rishab, Ajitnath & Aristanemi."

A well known German Oriental scholar, Dr. Hermann Jacob mentioned before the 3rd International Congress for the History of Religions as under:

"In conclusion let me assert my conviction that Jainism is an original system, quite distinct and independent from all others and that therefore it is of great importance for the study of philosophical thought and religious life in ancient India." (This was mentioned in Vol. 2, p. 66 Oxford.)

Pt. Jawahar Lal Nehru, in his celebrated book "Discovery of India", mentioned as under:

"Buddhism and Jainism were certainly not Hinduism or even the Vedic Dharma. Yet they arose in India and were integral parts of Indian life, culture and philosophy. A Buddhist or Jain, in India, is a hundred per cent product of Indian thought and culture, yet neither is a Hindu by faith. It is, therefore, entirely misleading to refer to Indian culture as Hindu culture."

As Dr. Jyoti Prasad Jain, an eminent Jain scholar mentioned in his treatise "Jainism_The Oldest Living Religion":

"In fact, there is whatsoever no tangible evidence to show that Jainism branched off from the Vedic religion or from any of its later development, at such and such time, nor there is any marked similarity between the fundamental doctrines and essential features of the two systems, which might favour that possibility. Jainism with its perfectly non-violent-creed, animistic belief, subtle and peculiar karma theory, its rejection of a creator and the creation theory, and the like, is not only quite an original system but is also absolutely independent of all other systems. In its origin, it is not only non-Aryan and pre-Aryan, in the sense that these terms are now generally understood, but it is also primitive and absolutely indigenous."

A well known book on Jainism written by Madam M. R. Guseva, [Candidate of Historical Sciences at the Institute of Ethnography of the Academy of Sciences, USSR and Jawaharlal Nehru Prize Winner (1973)], revealed the historical

and ethnographic roots of Jainism, tracing the development of the Jain community since ancient times evaluating the Jain contribution to Indian literature and art. In particular the book makes a point that Jainism has such substantially distinguishing features that they do not afford any possibility of regarding Jainism as an offshoot of Brahmanism.

One of the hotly debated issues in the United Nations was the question of defining what constitutes a 'minority'? Besides considering many proposed definitions, the UN had two authoritative definitions before it. The PCIJ (in an advisory opinion of July 31, 1930) had defined a community in the Graeco-Bulgarian Communities case as:

"By tradition, the 'community' is a group of persons living in a given country of locality, having a race, religion, language and traditions of their own and united by this identity of race, religion, language and traditions, in a settlement of solidarity, with a view to preserving their traditions, maintaining their form of worship, ensuring the instruction and upbringing of their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other."

The Government of Karnataka by a circular dated 12.6.1996 considered Jains belonging to backward classes. The circular reads as under:

"GOVERNMENT OF KARNATAKA
No. SWD 84 BCA 96
Karnataka Government Secretariat-2
Multistoreyed Building
Bangalore, dated 12-06-1996

CIRCULAR

Sub:- Regarding the issue of certificate of Backward classes to the candidates belonging to Jain Digambaras.

In the list of Backward Class Communities published in Government Order No. SWD 150 BCA 94 dated 17-9-94, the Jain (Digambara) Community has been included in category III (b). After considering the representations received from the various Associations of Jain Community and also the clarifications sought for by some of the Dy. Commissioners and Tahsildars in this regards, it is directed that the candidates belonging to Jain (Digambara) Community become eligible for reservation under Category III (b) only after production of reliable documents by them. The concerned candidate should prove, either through documentary evidence or through witness that he, his father or their ancestors belong to Jain (Digambara) Community. In cases where the Jain (Digambara) has not been clearly mentioned in the documents, the officer authorized to issue such certificates or the inquiring officer should hold local enquiry and only if he is satisfied as to the correctness of the claims of the candidates during course of such enquiry, that he should issue certificates. He should, however, draw up a clear and detailed proceedings of his enquiry before issue

of the Certificate. Disciplinary action will be taken against the Officers who issue Caste certificates/Inquiry Certificates in violation of rules of reservations.

Sd/-
(B. S. Rukmini)
Under Secretary to Govt.
Social Welfare Department"

In Re: Kerala Education Bill, 1957 reported in AIR 1958 SC 956, the Apex Court accepted the literal meaning of word "minority" to mean numerically less than 50%.

The Encyclopedia of World Religions by G. T. Bettany mentioned the Jain religion as independent of the other religions. According to the said Encyclopedia, Jainism is co-equal with, if not slightly older than, Buddhism, and took its rise in the same development of Brahman asceticism and reaction from Brahmanical tyranny.

Encyclopedia Britannica defines the Jain religion in the following words:

"Jainism" a religion and philosophy in India, founded in about the 6th century BC by Vardhmana Mahavira-the 24th of the Jinas (Conquerors), or great religious figures on whose example the religion is centered \026 in protest against the orthodox Vedic (early Hindu ritualistic cult of the period. Jainism, which does not espouse belief in a creator god, has as its ethical core the doctrine of ahimsa, or non injury to all living creatures, and as its religious ideal the perfection of man's nature, to be achieved predominantly through the monastic and ascetic life."

Dr. Radhakrishnan, who edited the 6th Volume of The Cultural Heritage of India, mentioned as under:

"The Jains claim a great antiquity for their religion. Their earliest prophet was Rishabhdeva. Who is mentioned even in the Vishnu and Bhagawat Puranas as belonging to a very remote past. In the earliest Brahmanic literature are found traces of the existence of a religious Order, which ranged itself strongly against the authority of the Vedas and the institution of animal sacrifice. According to the Jain tradition, at the time of the Mahabharata war, this Order was led by Neminatha, who is said to have belonged to the same Yadava family as Krisna and who is recognized as the twenty-second Tirthankara. The Order gathered particular strength during the eighth century B.C. under Parsvanatha the twenty-third Tirthankaran, who was born at Varanasi. This order we may call the sramana sangha (as distinct from the Vedic Order), which later became divided into the Jain and the Buddhist Orders under Mahaveera and the Buddha, respectively."

According to Dr. Raj Bali Pandey's book "Hindu Dharam Kosh" Jainism is described as a distinct religious order

existing in Indian polity since times of great antiquity and was opposed to ritualistic cult of Vedic philosophy. According to him, Jainism is existing in India since at least 700 B.C.

According to the learned Single Judge, minority status could be granted only by the U. P. Basic Shiksha Parishad and since it was not granted to the appellatant institution by the said Parishad, the appellatant institution could not terminate the services of respondent no. 3 without prior permission from the District Basic Education Officer. The appellatant aggrieved by this order preferred this appeal before this Court.

This Court, on 11.7.2003, while issuing notice directed that the status quo as on that date shall be maintained until further order. On 5.12.2003 this Court, while granting leave, directed the parties to continue to maintain the status quo.

In this appeal the appellatant raised a substantial question of law. The appellatant raised the plea that in view of the judgment of the Division Bench whether it was open to the learned Single Judge of the High Court to take a contrary view by its judgment dated 10.4.2003. The Division Bench observed as under:

"Having heard the learned counsel for the parties we find that it is not in dispute that the appellatant writ petitioner was working as a teacher in recognized basic school. The institution has been accorded the status of minority institution thus no prior approval of the District Basic Education Officer for terminating the services of the teacher in a minority institution is required to be taken in view of the provision Rule 15 of the 1978 Rule."

In view of the said clear findings of the Division Bench of the same High Court, the learned Single Judge of the same High Court could not take a contrary view. The learned Single Judge was bound by the judgment of the Division Bench of the said High Court.

It is not in dispute that the institution established and administered by the Jain Community which is recognized as minority by the State Government from the date of its establishment continuously for 25 years, whether the said benefit could be nullified by the learned Single Judge who had ignored the specific finding of the Division Bench. The appellatant also raised a question that respondent no. 3, who herself was working as a teacher after obtaining the benefit of the minority institution, could be permitted to take a plea that it is not a minority institution and such an act of respondent no. 3 would be against the principles of Estoppel and Acquiescence. It is also mentioned in the appeal that respondent no. 3 was appointed as a teacher in the appellatant institution in 1982 on the basis that the institution was a minority institution and that her appointment was not approved by the District Basic Education Officer since it was not required for the minority institution. The appellatant also submitted that respondent no. 3 could not be permitted to contend that approval of the Basic Education Officer is required for her services to be terminated. The appellatant also incorporated that whether the appellatant institution and other institutions duly recognized as minority institutions by the same authority namely the District Inspector of School, Etah by letter dated 25.8.1976 and debarring the status of the appellatant institution as not minority institution on the ground

that the District Inspector of School is not a competent authority to grant recognition whereas to allow to other institutions to continue as minority institutions recognized by the same authority would not be discriminatory under Article 14 of the Constitution. It is also mentioned in the appeal that the learned Single Judge committed a serious error of law in relying on the Circular dated 20.4.1971 which could not be made applicable to the schools governed by the provisions of the U.P. Basic Education Act 1972.

The appellant submitted that on the relevant date a Recognition Committee was constituted for the convenience of the local people for recognition of Junior High Schools, of which the Director of Inspector of School (for short D.I.O.S.) was appointed as Chairman. The appellant institution applied for recognition as minority institution with the Basic Education Officer. Since it also related to the recognition of institution, the Basic Education Officer forwarded the application to D.I.O.S. The D.I.O.S. recognized the institution as minority institution. Now, that status cannot be taken away by the learned Single Judge of the High Court, who chose to ignore the findings of the Division Bench of the same High Court.

In reply to the appeal, a separate counter affidavit was filed on behalf of respondent nos. 1 and 2 by one Dr. R. K. Dubey, Zilla Basic Siksha Adhikari, Etah, in which a preliminary objection has been taken that this appeal is not maintainable because under Chapter VIII Rule 5 read with Chapter IX Rule 10 of the Allahabad High Court Rules, the writ petitioner had to exhaust the remedy of a Special Appeal before the Division Bench and without exhausting the remedy of Special Appeal, this appeal before this Court cannot be entertained. It was also submitted in the counter affidavit that a management claiming to be a minority institution, had to apply for the grant of such status. Respondent nos. 1 & 2 had denied that any application had been filed to treat the appellant as a minority institution. In the counter affidavit it is mentioned that the U.P. Basic Education Act, 1972 and the Rules made thereunder specifically provided for making an application for according the status of minority institution. It is only after the competent authority is satisfied that an institution fulfils the tests for according the status of minority institution that an order in that behalf is passed. It is also mentioned in the reply affidavit that the issue of minority institution had to be decided by the U.P. Basic Shiksha Parishad and not by the Directorate of Inspector of Schools. It is also incorporated in the counter affidavit that the Directorate of Inspector of Schools was not an authority constituted under the U.P. Basic Education Act, 1972, but was an authority under the U.P. Intermediate Education Act and was not competent to recognize a Junior High School or the Basic school as a minority institution. Such status could be accorded by the Board of Basic Education.

A separate counter affidavit has also been filed by respondent no. 3, in which it is mentioned that originally the institution was registered on 7.3.1969 and the registration was renewed on 6.10.2001 and thereafter the management of the school had been changed. Now the institution is run by a Jain family. Respondent no. 3 also submitted that the minority status could only be granted by the U.P. Basic Shiksha Parishad. It was also submitted that the observations made by the Division Bench cannot be said to be binding on the Court.

The appellant, in the rejoinder affidavit to the counter affidavit of respondent nos. 1 and 2, has mentioned that the Jain community is a minority community for the purpose of Article 30(1) of the Constitution and the minority status was granted to the appellant as far back as on 25.8.1976 which could not be withdrawn in a collateral proceeding in such a manner. It is mentioned that Dr. S. N. Malhotra was the Director of Education, U.P. as well as the Chairman, Basic Education Board, U.P. during the relevant year 1976. He had issued a letter dated 30.5.1976 to the District Inspector of School/Regional Inspector of Girls School for authorizing them to pass the order on the application of various institutions submitted for granting them the status of minority institution.

We have heard the learned counsel for the parties at length. This appeal arose from the judgment of the learned Single Judge of the Allahabad High Court dated 10.4.2003 in C.M.W.P. No. 15255 of 2003. A preliminary objection was taken by respondent nos. 1 & 2 in the counter affidavit that under Chapter VIII Rule 5 read with Chapter IX Rule 10 of the Allahabad High Court Rules a special appeal lies against the order of the Single Judge before a Division Bench. Chapter VIII Rule 5 and Chapter IX Rule 10 of the Allahabad High Court Rules read as under:

"Chapter VIII Rule 5. Special appeal.- An appeal shall lie to the Court from a judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made by a Court subject to the Superintendence of the Court and not being an order made in the exercise of revisional jurisdiction or in the exercise of its power of Superintendence or in the exercise of criminal jurisdiction or in the exercise of jurisdiction conferred by Article 226 or Article 227 of the Constitution in respect of any judgment, order or award (a) of a tribunal Court or statutory arbitrator made or purported to be made in the exercise or purported exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act, with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution, or (b) of the Government or any Officer or authority, made or purported to be made in the exercise or purported exercise of appellate or revisional jurisdiction under any such Act of one judge."

In this appeal it is not necessary for us to decide as to whether a special appeal lay before the Division Bench of the High Court against the impugned order of the Single Judge.

We deem it appropriate to refer to some of the decided cases.

In *The Commissioner Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* reported in AIR 1954 SC 282 this Court observed that there are well known religions in India like Buddhism and Jainism which do not believe in God, in any Intelligent First Cause. The Court recognized that Jainism and Buddhism are

equally two distinct religions professed in India in contrast with Vedic religion.

In well known Kerala Education Bill's case, 1957 reported in AIR 1958 SC 956, this Court held that to claim the minority rights, the Community must be numerically a minority by reference to the entire population of the State or country where the law is applicable. In that way also, the Jain Community is eligible for the claim.

As per 1991 Census report, the population of the Jain community of both sects was approximately 35 lakhs as against the total Indian population of more than 90 crores.

As early as 1927 Madras High Court in Gateppa v. Eramma and others reported in AIR 1927 Madras 228 held that "Jainism as a distinct religion was flourishing several centuries before Christ". Jainism rejects the authority of the Vedas which form the bedrock of Hinduism and denies the efficacy of the various ceremonies which Hindus consider essential.

Again in 1939 in Hirachand Gangji v. Rowji Sojpal reported in AIR 1939 Bombay 377, it was observed that "Jainism prevailed in this country long before Brahmanism came into existence and held that field, and it is wrong to think that the Jains were originally Hindus and were subsequently converted into Jainism."

A Division Bench of the Bombay High Court consisting of Chief Justice Chagla and Justice Gajendragadkar in respect of Bombay Harijan Temple Entry Act, 1947 (C.A. 91 of 1951) held that Jains have an independent religious entity and are different from Hindus.

In Aldo Maria Patroni & Another v. E.C. Kesavan & Others reported in AIR 1965 Kerala 75, a Full Bench of the Kerala High Court opined that the word 'minority' has not been defined in the Constitution and in absence of any special definition, it must be held that any community, religious or linguistic, which is less than fifty per cent of the population of the State is entitled to the fundamental right guaranteed by Article 30 of the Constitution.

In Commissioner of Wealth Tax, West Bengal v. Smt. Champa Kumari Singhi & Others reported in AIR 1968 Calcutta 74, a Division Bench of the Calcutta High Court observed that "Jains rejected the authority of the Vedas which forms the bedrock of Hinduism and denied the efficacy of various ceremonies which the Hindus consider essential. It will require too much of boldness to hold that the Jains, dissenters from Hinduism, are Hindus, even though they disown the authority of the Vedas".

In Arya Samaj Education Trust, Delhi & Others v. The Director of Education, Delhi Administration, Delhi & Others reported in AIR 1976 Delhi 207, it was held as follows:

"Not only the Constitution but also the Hindu Code and the Census Reports have recognized Jains to belong to a separate religion."

In the said judgment, the Court referred to the observations of various scholars in this behalf. The Court quoted Heinrich

Zimmer in "Philosophies of India" wherein he stated that "Jainism denies the authority of the Vedas and the orthodox traditions of Hinduism. Therefore, it is reckoned as a heterodox Indian religion". The Court also quoted J. N. Farquhar in "Modern Religious Movements in India" wherein he stated that "Jainism has been a rival of Hinduism from the beginning". In the said judgment, in conclusion, the Court held that "for the purpose of Article 30(1), the Jains are a minority based on religion in the Union Territory of Delhi".

In *D.A.V. College, Jullundur v. State of Punjab* AIR 1971 SC 1737, the Hindus in Punjab were held to be constituting religious minority community within the State of Punjab because of the population ratio within the State.

In *A.M. Jain College v. Government of Tamil Nadu* (1993) 1 MLJ 140, the Court observed that it is also an admitted fact that the Jain community in Madras, Tamil Nadu is a religious and linguistic minority.

In *St. Stephen's College v. University of Delhi* (1992) 1

SCC 558, this Court in para 54 at page 596 observed as under:

"The minorities whether based on religion or language have the right to establish and administer educational institutions of their choice. The administration of educational institutions of their choice under Article 30(1) means 'management of the affairs of the institution'. This management must be free from control so that the founder 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."

Jain religion indisputably is not a part of Hindu religion. The question as to whether the Jains are part of the Hindu religion is open to debate. Jains have a right to establish and administer their own institution. But, only because an institution is managed by a person belonging to a particular religion, the same would not ipso facto make the institution run and administered by a minority community. A minority is determinable by reference to the demography of a State. Whether an institution is established and administered by a minority community or not may have to be determined by the appropriate authority in terms of the provisions of the statute governing the field. Furthermore, minority institutions are not immune from the operations of the measures necessary to regulate their functions. To what extent such regulations would operate, however, again is a matter which would be governed by the statute.

Minority communities do not have any higher rights than the majority. They have merely been conferred additional protection. This has been laid down by a Eleven Judge Bench of this Court. [See: *P.A. Inamdar & Others v. State of Maharashtra & Others*, (2005) 6 SCC 537].

The Court in the said judgment also dealt with the object of Article 30(1) of the Constitution. The Court in para 97 of the judgment observed the relevant para which reads as under:

"The object underlying Article 30(1) is to see the

desire of minorities being fulfilled that their children should be brought up properly and efficiently and acquire eligibility for higher university education and go out in the world fully equipped with such intellectual attainments as will make them fit for entering public services, educational institutions imparting higher instructions including general secular education. Thus, the twin objects sought to be achieved by Article 30(1) in the interest of minorities are: (i) to enable such minority to conserve its religion and language, and (ii) to give a thorough, good, general education to children belonging to such minority. So long as the institution retains its minority character by achieving and continuing to achieve the abovesaid two objectives, the institution would remain a minority institution."

It is interesting to note that the question as to whether the Jains should be treated to be a minority under Section 2 (c) of the National Commission for Minorities Act, 1992 came up for consideration before a Three-Judge Bench of this Court in *Bal Patil & Another v. Union of India & Others* (2005) 6 SCC 690 wherein this Court noticed that the framers of the Constitution engrafted group of Articles 25 to 30 in the Constitution of India against the background of partition of the country so as to allay the apprehensions and fears in the minds of Muslims and other religious communities by providing to them a special guarantee and protection of their religious, cultural and educational rights. It was held:

"27. The so-called minority communities like Sikhs and Jains were not treated as national minorities at the time of framing the Constitution. Sikhs and Jains, in fact, have throughout been treated as part of the wider Hindu community which has different sects, sub-sects, faiths, modes of worship and religious philosophies. In various codified customary laws like the Hindu Marriage Act, Hindu Succession Act, Hindu Adoption and Maintenance Act and other laws of the pre- and post-Constitution periods, definition of "Hindu" included all sects and sub-sects of Hindu religions including Sikhs and Jains."

Noticing certain concept of Hinduism vis-à-vis Jainism, it was opined:

"31. Thus, "Hinduism" can be called a general religion and common faith of India whereas "Jainism" is a special religion formed on the basis of quintessence of Hindu religion. Jainism places greater emphasis on non-violence ("Ahimsa") and compassion ("karuna"). Their only difference from Hindus is that Jains do not believe in any creator like God but worship only the perfect human being whom they called Tirathankar. Lord Mahavir was one in the generation of Thirthankars. The Tirathankars are embodiments of perfect human beings who have achieved human excellence at mental and physical levels. In a philosophical sense, Jainism is a reformist movement amongst Hindus like Brahamsamajis, Aryasamajis and Lingayats. The three main principles of Jainism are Ahimsa, Anekantvad and Aparigrah. [See (1) Encyclopaedia of Religion and Ethics, Vol.7 p.465; (2) History of Jains by A.K. Roy pp.5 to 23 and

Vinoba Sahitya, Vol.7 pp.271 to 284.]"

In the instant case, the State at one point of time accepted the school in question as having been established and administered by the Jain community which is a minority community in the State of Uttar Pradesh. It was recognised as such by reason of a Division Bench judgment of the High Court of Judicature at Allahabad. There was, thus, no reason for the authorities of the Respondents to take steps in relation to the self-same institution in a different manner.

Indisputably, under the statute governing the field, prior approval of the District Basic Education Officer was not necessary before terminating the services of a teacher. As the appellant's institution was recognised as a minority institution, in our opinion, the High Court was not correct in interfering in the manner it did.

Consequently, the impugned judgment of the Learned Single Judge is set aside.

This appeal is accordingly allowed. In the facts and circumstances of this case we direct the parties to bear their own costs.