



2026:DHC:5271



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Judgment reserved on: 12.05.2026**Judgment pronounced on: 01.07.2026*+ **W.P.(C) NO. 16805/2025**

ST ANTHONYS BOYS SECONDARY SCHOOL ...Petitioner

Through: Mr. Romy Chacko Sr Adv.  
with Mr. Ashwin Romy, Mr. Sachin Singh  
Dalal, Mr. Akshat Singh & Mr. Joe  
Sebastian, Advs.

versus

DIRECTORATE OF EDUCATION ...Respondent

Through: Ms. Avnish Ahlawat SC, Mr.  
Nitesh Kumar Singh, Ms. Aliza Alam, and  
Mr. Mohnish Sehrawat, Advs.**CORAM:****HON'BLE MR. JUSTICE JASMEET SINGH****J U D G M E N T**

1. By way of this writ petition, the petitioner School has approached this Court seeking directions against the respondent i.e., Directorate of Education ("**DoE**") to release the grant-in-aid for twenty teaching and non-teaching staff members and further prays for quashing of order dated 18.07.2025, which directed the petitioner to withhold its recruitment process, as well as order dated 09.10.2025, whereby surprise inspection of various schools including the petitioner School has been ordered.



## **FACTUAL BACKGROUND**

2. The petitioner School namely, ST. Anthony's Boys Secondary School is an aided Christian Minority Educational Institution, established in the year 1922 by an Italian missionary with the objective of imparting quality education to weaker sections of the society.
3. The petitioner School was granted status of Minority Educational Institution by the National Commission for Minority Educational Institutions *vide* certificate dated 21.06.2006.
4. The petitioner School *vide* letter dated 16.10.2018 submitted requisite document and sought permission to fill up 12 vacant positions towards the requirement of teaching and non-teaching staff.
5. The respondent/DoE sought clarification to the aforesaid letter regarding the number of vacant positions, to which, the petitioner School replied *vide* clarification letter dated 29.03.2019.
6. The respondent/DoE *vide* letter dated 22.09.2022, rejected the proposal of the petitioner School and stated that until the proposal for filling up vacancies in government aided schools through direct recruitment is finalized, such vacant posts may be filled up by appointing guest teachers.
7. The petitioner School again *vide* letter dated 06.10.2022 attempted to seek the aforesaid permission from the respondent/DoE but the same was again rejected by the respondent.
8. The petitioner relied on a judgment of a Coordinate Bench of this Court dated 28.05.2024 titled as *Delhi Tamil Education Assn. v. Director of Education*<sup>1</sup>, and invited applications *vide* advertisement

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<sup>1</sup> 2024 SCC OnLine Del 4158.



dated 08.07.2024 towards filling up of the 20 vacant positions for teaching and non-teaching staff.

9. Pursuant thereto, *vide* letter dated 27.07.2024, the respondent/DoE was requested to release the salaries of the successful candidates under grant-in-aid and a vacancy list was also duly supplied to the respondent.
10. However, the respondent/DoE issued a memorandum dated 03.08.2024, directing the petitioner to withhold the recruitment process on the ground that the judgment in the case of *Delhi Tamil Education Assn. (Supra)* is under challenge.
11. The said memorandum dated 03.08.2024 was challenged by the petitioner School before this Court in W.P.(C) No. 12957 /2024 on the ground of being bad in law and in violation of law as laid down in *Delhi Tamil Education Assn. (Supra)*.
12. While the matter was *sub judice* in the aforesaid writ petition, the respondent/DoE issued another memorandum dated 27.12.2024, directing the petitioner to keep the recruitment on hold.
13. The writ petition bearing W.P.(C) No. 12957 /2024 impugning the memorandum dated 03.08.2024 culminated in Judgment dated 08.05.2025, whereby the memorandum was quashed and the petitioner School was allowed to proceed with recruitment but strictly in accordance with the applicable provisions of Delhi School Education Act and Rules, 1973 ("*DSEAR*").
14. The respondent/DoE again attempted to stop the recruitment process by highlighting some discrepancies in its letter dated 18.07.2025. However, the petitioner School purportedly proceeded in accordance with the law laid down in various judicial pronouncements and issued appointment letters dated 04.08.2025 to the recruited staff.



15. The petitioner School replied to the letter dated 18.07.2025 and also sent the appointment letters of twenty staff member for its processing by the respondent so that the bills for their salaries could be generated.
16. The respondent/DoE has not responded to the aforesaid request for issue of grant-in-aid and instead had arbitrarily issued a surprise inspection order dated 09.10.2025 against the petitioner and other 23 aided minority schools.

### **SUBMISSIONS ON BEHALF OF THE PETITIONER**

17. Mr. Chacko, learned senior counsel for the petitioner School, states that this Hon'ble Court while disposing of W.P.(C) No. 12957/2024, has granted permission to proceed with the recruitment process initiated by advertisement dated 08.07.2024 and conduct the same strictly in adherence to the provisions of DSEAR.
18. At the outset, all three impugned actions of the respondent/DoE i.e., the withholding of grant-in-aid, issuance of impugned Order dated 18.07.2025, and the direction for surprise inspections of the aided minority schools including petitioner School, are vitiated by arbitrariness and are taken with absolute malafide intent to render the permission granted in W.P.(C) No. 12957/2024 infructuous.
19. It is also submitted by the learned senior counsel, that in the present case there are no allegations levelled against the petitioner School regarding appointment of any staff member who does not meet the qualification criteria prescribed by the State. It is also pointed out that even in the order dated 18.07.2025, there is no observation or finding to the effect that the newly recruited teachers are ineligible or fail to satisfy the qualification criteria as laid down by the State.
20. Rule 73 read with Rule 74 of the DSEAR mandates different grants which are essential for functioning of an aided school and the same



cannot be stopped unless it is found that the teachers appointed fail to meet the qualification criteria fixed by the State.

21. He further contends that it is a settled position of law that DoE is having no locus to interfere in the process of appointment by a minority institution and consequently, no prior approval of the DoE is required for recruitment of teachers as long as it is in strict compliance of DSEAR and the appointed teachers fulfil the qualification criteria. Reliance is placed on *Ahmedabad St. Xavier's College Society v. State of Gujarat*<sup>2</sup>, *TMA Pai Foundation v. State of Karnataka*<sup>3</sup>, *Secy., Malankara Syrian Catholic College v. T. Jose*<sup>4</sup>, *Delhi Tamil Education Assn. (Supra), Raisina Bengali School CR Park v. GNCTD & Ors.*<sup>5</sup>, *St. Anthony's Boys Secondary School v. Director Of Education and Ors.*<sup>6</sup>
22. It is also submitted that this Hon'ble Court in its interim Order dated 23.09.2025 passed in *Delhi Tamil Education Association (Regd.) v. Government of NCT of Delhi & Anr.*<sup>7</sup>, has sought an explanation as to why the binding direction of this Court are not complied with by the respondent/DoE. It is clear that the respondent/DoE can only highlight the deficiencies *qua* qualifications of the appointees and any other matter which falls within its jurisdiction concerning the recruitment process.
23. Learned senior counsel by placing reliance on a catena of judicial pronouncements submits that the right to administer a minority educational institution as envisaged under Article 30 of the

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<sup>2</sup> (1974) 1 SCC 717.

<sup>3</sup> (2002) 8 SCC 481.

<sup>4</sup> (2007) 1 SCC 386.

<sup>5</sup> W.P.(C) 4283/2024, Order dated 12.11.2024.

<sup>6</sup> W.P.(C) 12957/2024.

<sup>7</sup> W.P.(C) No. 14795/2025.



Constitution of India includes the right to appoint its staff and the management is free to choose from any qualified persons.

24. The direction issued by the respondent/DoE for conducting surprise inspection of various schools including the petitioner School is reflective of a vindictive approach, inasmuch as the order is directed against all such schools who have availed their constitutional remedy against the DoE by approaching this Court.
25. Moreover, the order dated 09.10.2025, is ultra vires as it contains no averment as to lack of qualification or experience of any of the candidates appointed by any of the 24 schools as stated therein.
26. Reliance is placed on Rule 96 of Delhi School Education Rules to state that the scheme of the DSEAR is such that it accords absolute liberty to the aided minority school to recruit its teachers and employees free from state interference as Rule 96(3) states that the staff has to be appointed by the selection committee and the state cannot make any law or regulation controlling the selection or appointment except to the extent of prescribing qualification criteria for the post.

#### **SUBMISSIONS ON BEHALF OF THE RESPONDENT**

27. At the outset, Ms. Ahlawat, learned counsel for the respondent/DoE, states that the present petition is *sans merit* as the impugned action and orders passed by the respondent/DoE are totally in terms and in accordance with the Order of this Court dated 08.05.2024 passed in W.P.(C) No. 12957/2024.
28. The recruitment process on the basis of which grant-in-aid is claimed for the newly recruited staff members is in itself vitiated for the reason of being in contravention to the DSEAR and applicable



circulars/orders/notifications issued by the respondent/DoE from time to time.

29. She states that the observations made by this Hon'ble Court in the judgment of *Delhi Tamil Education Assn. (Supra)* are not applicable in the factual matrix of the present case as the judgment does not substantiate the proposition that the minority aided schools can recruit teaching as well as non-teaching staff by evading the prescribed procedure laid down under DSEAR and by applicable circulars/notifications/orders issued by the respondent.
30. Further, the question for consideration before this Court in the case of *Delhi Tamil Education Assn. (Supra)* was limited to the extent of the necessity of prior clearance required from the DoE before filling the vacancies of teachers and principals, which was answered in negative making a restrictive observation that no prior approval of DoE is required. However, in the present case the question is *qua* the legality of the advertisement issued by the petitioner School. Thus, the observations noted in *Delhi Tamil Education Assn. (Supra)* will not apply to the facts of the present case.
31. This Court while disposing of W.P.(C) No. 12957/2024, categorically made an observation that if the respondent/DoE finds any contravention of the DESAR, the said judgment will not preclude it from taking actions in accordance with law and the advertisement dated 08.07.2024 issued by the petitioner School is in contravention of circular/order dated 03.02.2006 and 04.02.2021.
32. She further contends that the petitioner School has followed its own marking scheme adopted *vide* resolution No. 2/2025 instead of conducting recruitment process in accordance with the marking



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scheme issued by the respondent/DoE *vide* orders dated 26.02.2014 and 24.03.2014.

33. In formulating and applying its own marking scheme, the petitioner School relied on the judgment of Hon'ble Division Bench of this Court in the case titled as *Kiran Jain v. State (NCT of Delhi)*<sup>8</sup>, wherein it was held that the marking scheme circulars issued by the DoE cannot be applied to minority institutions. However, the petitioner School erred in overlooking the Order dated 22.10.2025 passed by the Hon'ble Supreme Court in *GNCTD and Anr. v. Kiran Jain and Anr.*<sup>9</sup>, wherein a categorical observation was made that the question of legality of the circular dated 26.02.2014 does not stand decided and the same was left open for decision in appropriate cases. Thus, the circular dated 26.02.2014 prescribing a marking scheme holds good in law until it is quashed.
34. She also states that Mr. Vincent James had been appointed for the post of librarian despite being overage by 8 months for the said position, as the maximum age limit for direct recruits to the said post is 30 years. The selection committee of the petitioner School illegally relaxed the 8 months overage defect and proceeded to recommend him by placing reliance on circulars dated 03.05.1976 and 21.01.2011, without taking any approval from DOE. The said circulars do not contemplate any relaxation unilaterally by the school or the selection committee.
35. Ms. Ahlawat places reliance on *State of Uttar Pradesh and Ors. v. Principal Abhay Nandan Inter College and Ors.*<sup>10</sup>, to contend that the aided minority institutions like in the present case do not enjoy

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<sup>8</sup> 2023 SCC OnLine Del 6353.

<sup>9</sup> SLP(C) diary No. 16483/2024.

<sup>10</sup> (2021) 15 SCC 600.



unfettered rights against State regulations and the minority aided institutions cannot claim a right wider in connotation than the similarly placed non-minority aided institutions. Thus, the respondent/DoE cannot be ousted totally from the recruitment process.

36. Reliance is also placed on *S.K. Mohd. Rafique v. Managing Committee Contai Rahamanai High Madrasah &Ors.*<sup>11</sup>, to argue that in that judgment the Hon'ble Supreme Court upheld the provisions of the West Bengal Madrasah Service Commission Act, 2008, dealing with selection of teachers as the same would not only serve the national interest but also interest of minority institutions. The same cannot be said to be a transgression of the constitutionally guaranteed right or interference with the affairs of minority institution. Reliance is also placed on *State of Gujarat &Ors. v. H.B. Kapadia Education Trust & Anr.*<sup>12</sup>.

### **ANALYSIS AND FINDINGS**

37. I have heard the learned counsel for the parties and perused the documents placed on record.
38. From a Conspectus of the factual matrix as explained above, it is clear that the recruitment process was conducted by the petitioner School pursuant to the judgment dated 08.05.2025 of this Court in earlier round litigation being W.P.(C) No. 12957/2024 titled as *St Anthonys Boys Secondary School v. Director of Education and Ors.*. In the said judgment, a Coordinate Bench of this Court relied on the judgment of *Delhi Tamil Education Assn (Supra)* and of the Hon'ble Division Bench in an LPA against the said judgment titled as *The Lt. Governor of Delhi & Ors. v. Delhi Tamil Education Association (Retd)*

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<sup>11</sup> (2020) 6 SCC 689.

<sup>12</sup> (2023) 19 SCC 578.



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*Through Its Secretary*<sup>13</sup> to quash the memorandum impugned therein dated 03.08.2024 and to allow the petitioner School to conduct the recruitment process strictly in accordance with the provisions of DSEAR and in case of any contravention of the applicable provisions, liberty was granted to DoE to initiate action in accordance with law. The relevant paragraphs of the judgment of *St Antonys Boys Secondary School (Supra)* reads as under:

*“5. The decision of the learned Single Judge in Delhi Tamil Education Association has been placed on record. It concerns the process of recruitment in a linguistic minority school. In paragraph 41 therein, the learned Single Judge formulated the issue, as to whether the clearance from the DoE was necessary to fill the vacancies of teachers and Principal, or whether the vacancies could be filled without such clearance. After consideration of the Delhi School Education Act and Rules, 1973 [“DSEAR”], the Court recorded the following conclusions:*

*“47.1 These provisions, even by themselves, would conclude the issue in controversy. The statutory position that emerges from Rule 98(2) read with the proviso thereto, juxtaposed with Rule 96 of the DSE Rules, is that the vacant posts of principal and teachers in the schools run by the petitioner association can be filled by the managing committee of the petitioner association without prior approval of the Director. Even if the selection committee,*

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<sup>13</sup> LPA 642/2024, decided on 22.07.2024.



*which selects the employees for appointment to the said posts, is required to include certain nominees of the DoE, those nominees perform a mere advisory role and do not participate in the actual exercise of selection of the persons to be appointed.*

*47.2 Even on the basis of the afore-noted provisions of the DSE Act and DSE Rules, therefore, there can be no embargo on the petitioner filling up the vacant posts of principal and teachers in the schools run by it. No prior approval of the DoE is needed. At the highest, all that can be said is that the selection committee which makes such appointments would require the participation of nominees of the DoE in accordance with the Rule 96(3)(a) and 96(3)(b) of the DSE Rules. Needless to say, the DoE would necessarily have to nominate persons as part of the selection committee, so that these posts can be filled.*

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*49.4.6 In any event that cannot constitute a legitimate ground on the basis of which the DoE can refuse the request of the petitioner to fill in the vacancies of Principals and Teachers in the schools run by it. As no prior approval of the DoE is required, therefore, the decision dated 1 December 2023 is also unsustainable in law*

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*50. It is accordingly held that the petitioner is entitled to make appointments against the vacant*



*posts of Principals and teachers in the schools run by it without prior approval of the DoE. The Selection Committee would, however, be constituted in accordance with the Rule 96(3)(a) of the DSE Rules in the case of Principals and 96(3)(b) in the case of teachers, subject to the role of the nominees of the DoE being restricted in terms of Rule 96(3-A). ”<sup>3</sup>*

6. *Contrary to the contents of the impugned memorandum dated 03.08.2024, by the time it was issued, the Division Bench had, in fact, already disposed of the appeal against the aforesaid judgment. The judgment of the Division Bench in *The Lt. Governor of Delhi &Ors. v. Delhi Tamil Education Association (Retd) Through Its Secretary*<sup>4</sup> has also been placed on record. The appeal was also decided against the DoE, albeit on slightly different grounds. The conclusions of the Division Bench are as follows:*

*“15. In view of the aforesaid analysis, we too hold that the letter/ communication dated 1st December, 2023, is unsustainable. However, we bind the respondent/Society to the statement made by Mr. Romy Chacko, learned counsel on the issue of strictly following the provisions of Rule 96 (3) of DSE Rules, 1973. We also reiterate the directions passed by the learned Single Judge in para no. 50 of the impugned judgement*

*16. In view of the aforesaid analysis and findings, we find no reason, much less any cogent reason to*



*interfere with the impugned judgment passed by the learned Single Judge. Resultantly, the present appeal is dismissed without any order as to costs.”<sup>5</sup>*

7. DoE has thereafter taken the matter to the Supreme Court in SLP(C) 28295/2024. By order dated 06.12.2024, the Supreme Court dismissed the Special Leave Petition.

8. The judgment in *Delhi Tamil Education Association*, therefore, holds the field. The impugned memorandum was premised only on the basis (albeit erroneously) that the LPA against the judgment of the learned Single Judge was pending. This basis has since been negated, as the judgment has been affirmed by the Division Bench, and the SLP has been dismissed.

9. Ms. Avnish Ahlawat, learned Standing Counsel for the respondent, draws my attention to the judgments of the Supreme Court in *Sk. Mohd. Rafique v. Managing Committee, Contai Rahamania High Madrasah and Ors.*,<sup>6</sup> and *State of Uttar Pradesh and Ors. v. Principal Abhay Nandan Inter College and Ors.*<sup>7</sup> to contend that the scope of regulation by the DoE, even in respect of minority institutions, is wider than contemplated in the judgment of *Delhi Tamil Education Association*.

10. As far as this aspect is concerned, I am of the view that such contention is not open to the DoE. The submissions of the DoE, based upon *Rafique* and *Abhay Nandan Inter College*, are both noted by the learned Single Judge in *Delhi Tamil Education Association* as mentioned below:



*“49.3.4 Mr. Jain seeks to submit that opening sentence in para 31 of the decision in Abhay Nandan Inter College itself eviscerates the distinction between an aided minority institution and aided nonminority institution. Para 32 goes on to observe that an aided institution is expected to comply with the conditions subject to which aid is granted. Para 33 further observes that “haze between a minority and non-minority institution is no longer in existence.*

*49.3.5 The reliance by Mr. Yeeshu Jain on these observations of the Supreme Court is, however, myopic. The decision goes on, in express terms, to approve the principle, in T.M.A. Pai that the regulatory power of the State over aided minority institutions does not extend to compromising on right of the minority to establish and administer the institution. The principle that grant of aid can also not be subjected to conditions which prejudices the said right also finds approval in para 34 of Abhay Nandan Inter College. In para 33, the Supreme Court has relied, inter alia, on para 42.1 of its earlier decision in Sk. Mohd. Rafique in which the Supreme Court reiterated the observation in T.M.A. Pai that the right to appoint staff, teaching and non-teaching, and the right to take disciplinary action against the staff were among the essential incidents*



*to establish and administer an educational institution.*

*49.3.6 The judgment in Abhay Nandan Inter College cannot, therefore be regarded as diluting the principles contained in Frank Anthony Public School Employees' Association, Malankara Syrian Catholic College and Sindhi Education Society.”*

*In fact, the judgment of the Division Bench also refers to the DoE's reliance on Rafique.*

*11. In view of the above, the petitioner's challenge to the memorandum dated 03.08.2024 must be sustained.*

*12. Mr. Romy Chacko, learned Senior Counsel for the petitioner, on the other hand, relies upon a subsequent Division Bench judgment in Kiran Jain v. Govt. of NCT of Delhi and Ors.<sup>8</sup>, which, according to him, restricts the scope of regulation concerning recruitment by minority educational institutions. Ms. Ahlawat submits that this judgment was also carried to the Supreme Court in SLP(C) 25294/2024. While the Supreme Court declined to interfere with the Division Bench judgment, she points out that it left open the issue concerning the validity of the DoE's circular dated 26.02.2014 prescribing a marking scheme and evaluation process for recruitment of teachers.*

*13. However, I am of the view that the aforesaid issue does arise for determination in this writ petition. The challenge of the petitioner herein is against the memorandum dated 03.08.2024, which is not predicated on compliance or non-compliance with the 2014 Circular.*



14. As before the Division Bench in *The Lt. Governor of Delhi & Ors. v. Delhi Tamil Education Association (Retd) Through Its Secretary*<sup>9</sup>, Mr. Chacko undertakes on behalf of the present petitioner that the School will strictly follow the provisions of the DSEAR, insofar as they are applicable, while carrying out the proposed recruitment. He submits that the matter has reached emergent proportions, as the School now has twenty-one vacancies out of a total faculty strength of thirty-six.

15. In view of the above, the writ petition is disposed of by setting aside the memorandum dated 03.08.2024. The petitioner is, thus, permitted to proceed with recruitment, pursuant to the advertisement issued on 08.07.2024 and/or by issuing a fresh recruitment advertisement, but subject to the submission recorded above, to proceed strictly in accordance with the applicable provisions of DSEAR.

16. Needless to say, if the DoE finds that there is any other noncompliance by the School, this judgment will not preclude it from taking steps in accordance with law, subject to the petitioner's rights and remedies.

17. All pending applications also stand disposed of.”

39. Ms. Ahlawat, has also drawn my attention to the fact that a person namely, Mr. Vincent James had been appointed by the petitioner School as librarian despite being overage by 8 months for the said position as the maximum age limit this position is 30 years. The said qualifying criteria was relaxed by placing reliance on circulars dated 03.05.1976 and 21.01.2011, without taking any necessary approval from the DoE.



40. To this objection raised by the respondent/DoE, Mr. Chacko, learned senior counsel, states that the said limited discrepancy will be looked into and the ineligible staff as stated by the respondent/DoE will be removed by taking appropriate actions.
41. Additionally, qualifications of no other staff members as appointed by the petitioner School are questioned by the respondent/DoE in response to the said petition.
42. The core submission of Ms. Ahlawat, learned counsel for the respondent/DoE, against the present petition is that the marking scheme which is adopted and used by the petitioner School in order to conduct the recruitment process is in contravention and total ignorance of a prescribed marking scheme provided by the DoE *vide* its order dated 26.02.2014. My attention has also been drawn to a facilitative table of comparison provided by the respondent/DoE in paragraph No. 12 of its Counter Affidavit, which is important and is reproduced as under:

*A. For T.G.T. (Trained Graduate Teacher)*

<i>Component</i>	<i>DoE Order dated 26.02.2014</i>	<i>School MC Marking Scheme(Resolution No. 2/2025)</i>
<i>Secondary/ Cl.10</i>	<i>Not specified</i>	<i>Not specified</i>
<i>Sr.Secondary /Cl.12</i>	<i>10</i>	<i>10</i>
<i>Graduation</i>	<i>30</i>	<i>20</i>
<i>Post Graduation</i>	<i>Nil (counted in Addl. Qual.)</i>	<i>10(separate head)</i>
<i>B.Ed.</i>	<i>20</i>	<i>15</i>
<i>CTET/</i>	<i>15</i>	<i>10</i>



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<i>Outstanding</i>		
<i>Additional Qualification</i>	<i>10</i>	<i>Nil</i>
<i>Teaching Experience</i>	<i>10</i>	<i>5</i>
<i>'Christian Minority' Criterion</i>	<i>NIL</i>	<i>10 marks</i>
<i>Interview Marks</i>	<i>05</i>	<i>20</i>
<i>Grand Total</i>	<i>100</i>	<i>100</i>

### *B. For Librarian*

<i>Component</i>	<i>DoE Order dated 26.02.2014</i>	<i>School MC Marking Scheme(Resolution No. 2/2025)</i>
<i>Sr. Secondary</i>	<i>15</i>	<i>10</i>
<i>Graduation(B.A./B.Com/ B.Sc.)</i>	<i>30</i>	<i>15</i>
<i>B.Lib</i>	<i>30</i>	<i>15</i>
<i>Additional Qualification (M.Lib. only)</i>	<i>10</i>	<i>15(separate head)</i>
<i>Outstanding/Diploma/ Certificate in Comp. Course</i>	<i>NIL</i>	<i>10</i>
<i>Experience(Librarian only)</i>	<i>10</i>	<i>5</i>
<i>'Christian Minority' Criterion</i>	<i>NIL</i>	<i>10 marks</i>
<i>Interview Marks</i>	<i>05</i>	<i>20</i>
<i>Grand Total</i>	<i>100</i>	<i>100</i>

### *C. For LDC/Junior Assistant*

<i>Component</i>	<i>DoE Order dated 24.03.2014</i>	<i>School MC Marking Scheme (Resolution</i>
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		No. 2/2025)
Secondary/Cl. 10	30	20
Sr.Secondary/Cl. 12	15	30
Typing/Computer	30	Nil
Graduation	Nil	10
Outstanding/ Computer Diploma	Nil(Addl. Qual.=10)	5
Additional Qualification	10	Nil
Experience	10	5
'Christian Minority' Criterion	NIL	10 marks
Interview Marks	05	20
Grand Total	100	100

#### D. For Lab. Assistant

Component	DQE Order dated 24.03,2014	School MC Marking Scheme (Resolution No. 2/2025)
Secondary/Cl. 10	30	20
Sr. Secondary (Science w/ practical)	45	30
Additional Qual. (B.Sc. Phy/Chem/Bio)	10	Nil/Subsumed
Graduation	Nil	10
Outstanding / Computer Diploma	Nil	5
Experience (as Lab. Asst.)	10	5
'Christian	NIL	10 marks



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<i>Minority' Criterion</i>		
<i>Interview Marks</i>	<i>05</i>	<i>20</i>
<i>Grand Total</i>	<i>100</i>	<i>100</i>

*E. For Assistant Teacher*

<i>Component</i>	<i>DQE Order dated 26.02.2014</i>	<i>School MC Marking Scheme (Resolution No.2/2025)</i>
<i>Secondary/Cl.10</i>	<i>10</i>	<i>10</i>
<i>Sr. Secondary/ Cl. 12</i>	<i>20</i>	<i>20</i>
<i>JBT/ETT</i>	<i>30</i>	<i>15</i>
<i>Graduation (Addl. Qualification)</i>	<i>10</i>	<i>10</i>
<i>Post-Graduation</i>	<i>NIL</i>	<i>NIL</i>
<i>CTET / Outstanding</i>	<i>15</i>	<i>10</i>
<i>Teaching Experience</i>	<i>10</i>	<i>5</i>
<i>'Christian Minority' Criterion</i>	<i>NIL</i>	<i>10 marks</i>
<i>Interview Marks</i>	<i>05</i>	<i>20</i>
<i>Grand Total</i>	<i>100</i>	<i>100</i>

43. A selection made in contravention of the circular dated 26.02.2014 (marking scheme) was the subject matter of another petition bearing W.P.(C) No. 10549/2018 titled as ***Kiran Jain v. Government of NCT of Delhi & Ors.***, wherein the learned Single judge dismissed the petition but the Hon'ble Division Bench of this Court reversed the said decision in ***Kiran Jain (Supra)*** holding that prescription of a marking



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scheme is undoubtedly an interference with the constitutionally guaranteed right of minority institutions as envisaged and protected by virtue of Article 30(1) of the Constitution of India. The relevant paragraphs highlighting the observations of the Hon'ble Division Bench in ***Kiran Jain (Supra)*** reads as under:

*“58. Accordingly, this Court is of the considered opinion that the Circular issued by Respondent No. 2 has inherently interfered with the management's control over Respondent No. 3 to the extent that the State would effectively wield an all-pervasive control over the selection of teachers of an aided minority institution. The Circular by prescribing the marking scheme, has resulted in the State transgressing from prescription of the eligibility standards and/or requisite qualifications to also then decide the ranking of qualified persons and impliedly exercise control over the selection and appointment of qualified persons which would be contrary to settled law. The Supreme Court has repeatedly held the selection and appointment of qualified teachers to be an intrinsic limb of the autonomy of a minority educational institution and its rights enshrined under Article 30(1) of the Constitution of India. Moreover, the Circular would then give the DoE the ability to test propriety or rationality of the process of choice qua the appointment of a qualified candidate which the Supreme Court and this Court has held to be an independent process, free from even judicial scrutiny.*”



59. Furthermore, a coordinate bench of this Court in *Queen Mary's School, (Supra)* clarified that aided minority schools shall adhere to *inter alia* recruitment rules and other general norms to the extent they prescribe qualifications, experience, age and other such criteria for appointment (as they are regulatory).

60. Therefore, following the principles of law culled out above, we have no hesitation in holding that the Ld. Single Judge has erred in dismissing the Writ Petition by failing to appreciate that the prescription of a marking scheme/evaluation matrix must undoubtedly be viewed as interference with the manner of selection of qualified candidates and not merely the prescription of minimum standards of teaching in furtherance of an ever evolving and dynamic education system. Accordingly, the Circular and its rigors cannot be applied to a minority institution such as Respondent No. 3 under the garb of a regulatory framework as the Circular and the actions following from the Circular would directly impinge on the rights of a minority institution which is protected under Article 30(1) of the Constitution of India and, accordingly, free to evolve its own marking scheme/evaluation matrix to evaluate qualified candidates.

61. Accordingly, as we find in favor of the Appellant on all counts, the Impugned Judgment of the Ld. Single Judge is hereby set aside and the LPAs are allowed.

62. The Appellant/Ms. Kiran Jain shall be entitled for appointment by virtue of the appointment letter dated



*18.12.2017 and shall be treated in service from the date she reported on duty i.e., 16.01.2018. The Appellant shall also be entitled for seniority, notional fixation of salary, increments and all consequential benefits except backwages. The Respondent GNCTD/DoE is also directed to release the grant-in-aid in respect of the post in question.”*

***(Emphasis Supplied)***

**44.** The Hon’ble Supreme Court *vide* its Order dated 22.10.2024 passed in a Special Leave Petition bearing diary No. 16483/2024, disposed of the SLP against the Hon’ble Division Bench judgment in ***Kiran Jain (Supra)*** by making the following categorical observation, which reads as under:

*3. It is submitted that Circular dated 26.02.2014 issued by the Directorate of Education was not challenged before the High Court by raising specific grounds in the writ petition. This fact is fairly admitted by the learned counsel for the respondents.*

*4. While we are not inclined to interfere with the judgment of the High Court with respect to the relief granted to the respondents herein, we keep the question of law about the legality and validity of the Circular dated 26.02.2014 open for being considered in an other appropriate case(s). We also note the fact that there is no other employee or candidate who is contesting the appointment of respondent no.1.*

*5. With above observations, the Special Leave Petition is disposed of.*



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*(Emphasis Supplied)*

45. In view of the observations made by the Hon'ble Supreme Court, the question of validity of the circular dated 26.02.2014 remains open for adjudication, it is the respondent's case that the validity and applicability of the said marking scheme was upheld by the Hon'ble Supreme Court and hence the resolution No. 2/2025 passed by the petitioner School is illegal and invalid for being in clear contravention of the said circular.
46. To my mind, the said submission of the respondent cannot be sustained as the disposal of an SLP, when leave is not granted but some categorical observations are made by the Hon'ble Supreme Court to the effect that the question of validity is left open for adjudication, does not by any implication mean that the validity of the said circular is affirmed by the Hon'ble Supreme Court.
47. The validity of the circular dated 26.02.2014, does not form the core of the issue and the controversy raised in the present petition lies under a very narrow and limited compass. Moreover, the petitioner School is also ready and willing to file an affidavit within two weeks from the date of pronouncement of this judgment, undertaking that in case the validity of the circular dated 26.02.2014 is upheld, the petitioner will return back the entire amount received by the respondent/DoE towards grant-in-aid within four weeks thereafter.
48. The facilitative comparison chart as reproduced above, to my mind, shows that the petitioner School has not made any compromise or affected the standards of teaching staff and other staff sought to be appointed by them as adequate marks have been assigned to the academic qualifications and experience.



49. It is now a settled position of law that minority institutions have the right to appoint their staff as per their discretion/satisfaction and no prior approval of DoE is required for the said appointments as long as the persons appointed by the minority institutions fulfil the criteria of qualification and experience as prescribed by the DoE. This position was settled by a Coordinate Bench of this Court in its judgment of *Delhi Tamil Education Assn. (Supra)* in the following words:

*“49.4. Applying the law to the facts*

*49.4.1. When the above principles are applied to the facts on hand, the conclusion is inescapable. The petitioner, as an aided minority institution has an absolute right to appoint the persons whom the petitioner chooses, as Principal, teachers and other staff, in the educational institutions run by it. No prior permission or approval of the DoE is required. The extent of regulation by the DoE is limited to prescribing qualifications and experience of the Principals and teachers. So long as the Principals and teachers who are appointed possess the prescribed qualifications and experience, there can be no restriction whatsoever on the right of the petitioner to make appointments to fill in the vacancies in the schools run by it.*

*49.4.2. The grant of aid, by the State, to the minority institution, makes no substantial difference to this legal position. At the highest, the State can regulate the proper utilization of the aid which it grants. It cannot subjugate the minority educational institution to its dictates in the matter*



*of appointment of teachers, or Principals, on the pretext that it has granted aid to the institution.”*

***(Emphasis Supplied)***

50. The aforesaid judgment has also attained finality as the challenge against the said judgment has been taken by the DoE before the Hon'ble Division Bench<sup>14</sup> and the Hon'ble Supreme Court<sup>15</sup>, and the said challenges have been rejected at both the instances.
51. The right to appointment of teachers and staff (without compromising their educational qualifications and relevant experience) forms an integral part of right to manage/administer the minority institution by the minority as guaranteed under Article 30(1) of the Constitution of India.
52. The respondent/DoE in the present petition also places reliance on ***Principal Abhay Nandan Inter College (Supra)***, more particularly on its paragraph Nos. 31, 32, 33 and 36 to contend that the aided minority institutions do not enjoy unfettered right against State regulations and the minority aided institutions cannot claim a right wider in connotation than the similarly placed non-minority aided institutions and the respondent/DoE cannot be ousted totally from the recruitment process. The relevant paragraphs of the aforesaid judgment reads as under:

*“Minority and non-minority*

*31. When it comes to aided institutions, there cannot be any difference between a minority and non-minority one. Article 30 of the Constitution of India is subject to its own restrictions being reasonable. A protection cannot be*

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<sup>14</sup> LPA 642/2024, decided on 22.07.2024.

<sup>15</sup> SLP(C) 28295/2024, Order dated 06.12.2024



*expanded into a better right than one which a non-minority institution enjoys. Law has become quite settled on this issue and therefore does not require any elaboration.*

*32. Thus, on the aforesaid issue we have no hesitation in reiterating the principle that an institution receiving aid is bound by the conditions imposed and therefore expected to comply. Once we hold so, the challenge made on various grounds, falls to the ground.*

*33. The haze between a minority and non-minority institution is no longer in existence. This Court in Sk. Mohd. Rafique [Sk. Mohd. Rafique v. Contai Rahamania High Madrasah, (2020) 6 SCC 689] has dealt with the same through the following paragraphs : (SCC pp. 782, 785, 787 & 793, paras 41-43 & 59). ...”*

- 53.** From a conspectus of the paragraph No. 49.3 and more particularly paragraph Nos. 49.3.4 and 49.3.6 of ***Delhi Tamil Education Assn. (Supra)***, it is clear to my mind that the said contention as raised herein by the respondent/DoE were already taken into due consideration by the learned single judge and I am in complete agreement with the views of the learned single judge. Thus, the contention of the respondent is misconceived, unfounded and a mere reiteration of submission already adjudicated. The relevant paragraphs of the judgment read as under:

*“49.3. Abhay Nandan Inter College*

*...*

*49.3.4. Mr. Jain seeks to submit that opening sentence in para 31 of the decision in Abhay Nandan Inter College itself*



*eviscerates the distinction between an aided minority institution and aided non-minority institution. Para 32 goes on to observe that an aided institution is expected to comply with the conditions subject to which aid is granted. Para 33 further observes that “haze between a minority and non-minority institution is no longer in existence.”*

*49.3.5. The reliance by Mr. Yeeshu Jain on these observations of the Supreme Court is, however, myopic. The decision goes on, in express terms, to approve the principle, in T.M.A. Pai that the regulatory power of the State over aided minority institutions does not extend to compromising on right of the minority to establish and administer the institution. The principle that grant of aid can also not be subjected to conditions which prejudices the said right also finds approval in para 34 of Abhay Nandan Inter College. In para 33, the Supreme Court has relied, inter alia, on para 42.1 of its earlier decision in Sk. Mohd. Rafique in which the Supreme Court reiterated the observation in T.M.A. Pai that the right to appoint staff, teaching and non-teaching, and the right to take disciplinary action against the staff were among the essential incidents to establish and administer an educational institution.*

*49.3.6. The judgment in Abhay Nandan Inter College cannot, therefore be regarded as diluting the principles contained in Frank Anthony Public School Employees' Association, Malankara Syrian Catholic College and Sindhi Education Society.”*



54. My attention has also been drawn to a challenge preferred by the DoE by way of an LPA bearing No. 372/2025 against an Order of a Coordinate Bench of this Court dated 12.11.2024 passed in writ petition bearing W.P.(C) No. 4283/2024, titled as ***Raisina Bengali School C R Park v. Govt of National Capital Territory of Delhi and Ors***, wherein the petition was allowed after taking into consideration the scope and necessity of composition of recruitment committees as contemplated under Rule 96 of the DSEAR. In the said LPA, the Hon'ble Division Bench *vide* its Order dated 03.02.2026 has referred the matter to a larger bench for consideration on the substantial questions of law framed therein, which read as under:

- I. *“Whether the exemption granted to minority institution under Section 12 of the DSE Act stood nullified, making Chapter VIII of DSE Rules applicable to all minority schools whether aided or unaided?”*
- II. *Whether the Director of Education retains any legitimate interest in overseeing the process of the recruitment as per Rule 96 of the DSE Rules and ensuring that the process remains transparent, fair and free from corruption?*
- III. *Can a government aided minority institution claim absolute autonomy and complete immunity from reasonable regulatory measures in the matters of public employment when substantial aid is received from the government?*
- IV. *Whether the decision in Queen Mary's School (supra) was dealing with limited question of whether minority aided schools were required to adopt the exact*



*composition of Recruitment Committees as prescribed in Rule 96 of the DSE Rules and did not hold that the Director of Education has no regulatory authority over the recruitment process in such institutions?*

V. *Whether the constitutional balance between the rights of the minority institution under Article 30(1) of the Constitution of India, 1950 and the legitimate regulatory authority of the State under Article 30(2) of the Constitution of India, 1950 permits oversight from the Director of Education for recruitment in government aided minority schools to ensure public interest, quality of education and financial accountability?"*

55. While adjudicating the present matter, this Court, no doubt, can await the outcome of the reference to the larger bench (in LPA No. 372/2025) but that would mean 19 (20-Mr.Vincent James, librarian) employees would be working in the petitioner School without any salary. Thus, the said course of action would adversely affect their right to life and livelihood.
56. In this view of the matter, the present judgment shall be subject to the Orders that may be passed in the reference made by the Hon'ble Division Bench in LPA 372/2025.

### **CONCLUSION**

57. The settled position of law as it stands today is that no restrictions/no criteria other than prescribing qualifications and/or experience for appointment of non-teaching and teaching staff can be prescribed by the DoE *qua* the aided minority institutions.



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58. Hence, the order dated 18.07.2025 directing the petitioner School to withhold recruitment process cannot be sustained and is hereby quashed.
59. However, there can be no restrictions on the respondent/DoE to conduct any type of inspection of the Schools, in accordance with law.
60. Accordingly, the present petition is allowed and disposed of with the following directions:
- I. The concerned authorized representative of the petitioner School shall file an affidavit within two weeks from the date of pronouncement of this judgment, undertaking that in case the validity of the circular dated 26.02.2014 is upheld, the petitioner School will return back the entire amount received by the respondent/DoE towards grant-in-aid within four weeks thereafter.
  - II. Subject to completion of formalities by the petitioner, the removal of the ineligible/unqualified staff (Mr. Vincent James) and filing of the affidavit as detailed above, the respondent/DoE's contribution towards the salary of the 19 other staff members shall be released expeditiously and not later than 4 weeks from the date of pronouncement of this judgment. Needless to state the respondent/DoE shall continue to release the grant-in-aid regularly.

**JASMEET SINGH, J**

**JULY 01, 2026/SS**