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# Brojo Bhusan Mishra Vs State of West Bengal and Others

**Court:** Calcutta High Court

**Date of Decision:** Dec. 9, 1994

**Acts Referred:** Constitution of India, 1950 â€" Article 14, 30, 30(1), 30(2)

**Citation:** 99 CWN 1134

**Hon'ble Judges:** Gitesh Ranjan Bhattacharjee, J

**Bench:** Single Bench

**Advocate:** Malay Basu and H. Barua, for the Appellant; Asok Kumar Sengupta and Binayak Kumar Ghosal, for the Respondent

## Judgement

Gitesh Ranjan Bhattacharjee, J.
The writ petitioner who is a teacher of National High School for Boys. 42/1. Hazra Road, Calcutta. prays

for higher scale of teachers with post-graduate degree, that is, the post-graduate scale in view of the Government of West Bengal. Education

(Budget Branch) Department Memo No. 400-EDN. (B) dated the 10th September, 1991. The petitioner was appointed in the said school, being

respondent no. 5, in the year 1977 as a teacher for physical education. In August 1979 the petitioner graduated from Ranchi University and he

along with other teachers were subsequently given the graduate scale. Still later, the petitioner obtained the degree of Master of Arts (M.A.) in

Hindi from the Ranchi University. The result of the said examination was published on 3rd November, 1983 and the petitioner was placed in the

second division. His contention is that he is now entitled to higher scale of teachers with post-graduate degree, that is post-graduate scale in view

of the Government of West Bengal Education (Budget Branch) Department Memo No. 400-EDN. (B) dated 10th September, 1991 which

provides inter alia that a secondary school teacher who has improved his qualification subsequent to his appointment in a subject not relevant to his

teaching will be allowed the higher scale on qualification basis with effect from the 1st April, 1981 or after five years'' teaching counting from the

date on which the higher qualification was obtained, whichever is later. In the present case, it is the contention of the petitioner that the petitioner

obtained the post-graduate degree in the year 1983 and therefore he is entitled to the higher scale meant for post-graduate degree-holders from

the appropriate date falling in 1988. The writ petition is contested by the respondent nos. 5, 6 and 7. As I have already mentioned the respondent

no. 5 is the National High School of which the respondent no. 6 is the Principal. Respondent no. 7 N. R. Iyer Memorial Education Society runs

and manages the said school and it is the contention of the contesting respondents that the school being a minority institution within the meaning of

Article 30 of the Constitution of India run and managed by the said Society there can not be any government interference with the administration of

the school and as such the concerned Government memorandum relied upon by the petitioner is not applicable to the school. It is the case of the

respondents that the said school is run and managed by the said Society formed by the Tamil Community of Calcutta which is a linguistic minority

community here. The petitioner has relied upon two documents which are Annexures L and M to the writ petition in C.O. No. 1809(W) of 1992.

The first is a letter bearing no. 3083 dated the 7th December, 1983 addressed by the Deputy Director of Secondary Education. West Bengal to

the District Inspector of Schools on the subject clarification in respect of fixation of pay in the revised scale of a teacher who has improved

qualification not relevant to the teaching subject. In the said letter it is stated with reference to G.O. No. 372 dated 31st July 1983 that higher scale

of pay shall be allowed with effect from the date on which the qualification is obtained and that it should be counted with effect from the date of

publication of the result of examination is published. The other document is Memorandum No. 400_EDN.(B) dated the 10th September 1991 by

which amendment was made with effect from the 1st day of April 1981 in the Annexure 1 to the Memorandum no. 372-EDN(B) dated 31st July,

1981 in the following manner.

In the said annexure to the said Memorandum, for subparagraph (b) of paragraph (2) under N.B. viz. (B) All existing secondary school teachers

who have improved their qualifications not relevant to their teaching subjects will be allowed the higher scale on qualification basis after five years

teaching counting from the date on which higher qualification was obtained the following shall be substituted (b) All existing secondary school

teachers who were appointing with higher qualifications in subjects not relevant to their teaching or who improved their qualifications subsequent to

their appointment in subjects not relevant to their teaching will be allowed the higher scale on qualification basis with effect from the 1st April, 1981

or after five years" teaching counting from the date on which higher qualification was obtained, whichever is later.

2. Accordingly, the petitioner claims the higher scale, namely the postgraduate scale of teachers on the ground that a period of five years has

already elapsed since he improved his qualification by obtaining Master Degree in Arts in a subject not relevant to his teaching.

3. The contention of the contesting respondents however is that the aforesaid Government memos are not applicable to the respondent school

which is a minority school covered by Article 30 of the Constitution and as such the petitioner is not entitled to claim any higher scale on the ground

that he has since improved his qualification by obtaining M.A. degree. In paragraph 17 of the Affidavit-in-Opposition in C.O. No. 4122(W) of

1992 it is stated that the respondent institution is being managed by N. R. Iyer Memorial Education Society who arc the founders, managers and

administrator of the National High Schools and this court has already found that the said Society has the right of linguistic minority under Article

30(1) of the Constitution of India to establish and administer educational institutions of their choice and as such the said educational institution is not

bound by any circular and/or order issued by the respondent Government interfering with the management and administration of the affairs of the

Institution. Admittedly, the respondent school has obtained recognition from the West Bengal Board of Secondary Education. Admittedly, the

school receiving Government D.A. (dearness allowance) for payment to its teachers. It is contended on behalf of the contesting respondents that

mere receipt of Government D.A. does not make the school a Government aided school and as such the school, being protected under Article

30(1) of the Constitution of India, is not bound by the concerned Government Circulars on the basis of which the petitioner is claiming higher scale

of pay.

4. The learned Advocate for the contesting respondents heavily relied upon the decision of a learned single Judge of this court reported in 85

CWN 113 and also upon an unreported decision dated the 18th September, 1989 of a Division Bench of this court in Appeal No. 1278 of 1987

(Mrs. Subhalakshmi Seshadri v. State of West Bengal and Ors.). The said unreported decision of the Division Bench is virtually made the sheet-

anchor of the case of the contesting respondents inasmuch as the said decision relates to National High School for Girls established and managed

by N.R. Iyer Memorial Education Society which society is respondent no. 7 in the present writ petition and which was also a respondent in the

earlier writ petition filed by said Subhalakshmi Seshadri. The said Writ petition was moved by Subhalakshmi Seshadri, the erstwhile Assistant

Head Mistress of National High School for Girls on being aggrieved by non-consideration the age of superannuation as per Government Circular

issued by the Education Department on 31st March, 1986. Under the Government circular, so claimed the petitioner, she was entitled to extension

of service on year to year basis upto the age of 65 years but her grievance was that the school authorities were denying such benefit to her. The

Division Bench considered in this connection the said earlier decision of a single Bench of this court reported in 85 CWN 113 where it was held

that under Article 30(1) the right of linguistic minority to establish and administer educational institution had been guaranteed whereunder all

minorities, whether based on religion or language, would have the right to establish and administer educational institutions of their choice and that in

such a situation the Government had no power to interfere with such management. It also came up for consideration before the Single Bench in that

case as to whether N.R. Lyer Memorial Education Society fell within the purview of Article 30(1) of the constitution. The Tamil Community in

Calcutta established a school here on their own land and the management of the school was entrusted with the Society formed exclusively by the

members of the South Indian Community. The Managing Committee of the school was however superseded and an administrator was appointed

with a Chairman to reconstitute the Managing Committee of the school in disregard of the special constitution of the society. Such action was

challenged by a writ petition claiming protection under Article 30(1) of the Constitution of India. It was held by the Learned Single Judge in the

said decision that the linguistic minorities under Article 30(1) of the Constitution of India had not only the right to establish but also to administer

their educational institutions, but such right however, would be subject to certain regulatory measures in the interest of public health, sanitation,

maintenance of academic standards and so on, but those regulations must not amount to restriction and if they did so then that would be violative of

Article 30(1) of the Constitution of India. Under the circumstances, it was further held that the supersession of the Managing Committee and the

appointment of the administrator was beyond the permissible limits of regulation and the concerned respondents were entitled to claim the

protection of Article 30(1) of the Constitution of India and as such no writ of mandamus could be issued against them. In the case under

consideration before the Division Bench (supra) the question of grant of extension of service to the writ petitioner in terms of the Government

Order was involved and it was held by the Division Bench that the Government circular in the matter had no application to the concerned

respondents. In the said decision of the Division Bench the court also expressed opinion on the question whether the respondent institution was a

Government aided institution. It was observed by the Division Bench that the writ petitioner had not so claimed in the writ petition save and except

contending that the said educational institution received by way of dearness allowance a sum of rupees four lacs every year but the receipt of the

clearness allowance did not make it either a government institution of government aided institution under Article 30(2) of the Constitution which

provides that the state shall not. in granting aid to educational institutions, discriminate against any educational institution on the ground that it is

under the management of minority community whether based on religion or language, and under the circumstances, grant of dearness allowance to

such an institution under the management of a minority community based on language can not make it a government institution or a government

aided institution. It may be noticed that in recording its opinion that the receipt of the dearness allowance does not make the school a government

aided institution the Division Bench did not discuss or disclose the reason or logic behind such opinion nor did the Division Bench consider certain

government circulars and the relevant Supreme Court decisions covering the matter as the attention of the Division Bench was not drawn to the

same.

6. The learned Advocate for the contesting respondents heavily relied upon the aforesaid two decisions, one, of the Learned Single Judge reported

in 85 CWN 113 and the other, the unreported decision dated 18th September, 1989 of Division Bench in which the aforesaid decision in 85

CWN 113 was also considered. It is submitted on behalf of the contesting respondents that in view of the aforesaid decisions of this court there is

now no scope of holding that the petitioner who is serving in a private school established and managed by a society constituted by linguistic

minority is entitled to any relief. On the other hand, the learned Advocate for the petitioner relied upon certain other decisions which I discuss

hereafter. One of the decisions relied upon by the learned Advocate for the petitioner is an unreported decision of Suhas Chandra Sen, J. (as his

Lordship then was dated the 11th October, 1988 in order no. 2276 of 1987 of this court. In that unreported decision the question that fell for

consideration was whether the decision of the Managing Committee of Shri Bishudha Nanda Saraswati Vidyalaya which was a private educational

institution established and managed by a linguistic minority group could be interfered with by the State or the Board of Secondary Education or any

of the officers of the State or the Board where such decision relates to the question whether extension of service of teachers should be given after

the age of superannuation, in view of the protection of Article 30 of the Constitution which the institution is entitled to. The said institution

Bishuddha Nanda Saraswati Vidyalaya although a private and unaided school, however, used to receive considerable sums of money from the

Government for payment of Dearness Allowance to the teachers and in many cases the total amount of dearness allowance paid per month was

more than the salary given by the school. In our present case also the school receives huge sum of money from the Government for payment of

dearness allowance to the teachers and it is submitted that the total amount of dearness allowance paid per month is more than the salary given by

the school. The rule 28 of the Management of Recognised Nongovernment Institution (aided and unaided) Rules, 1969 fell for consideration in that

decision. In the note to the said rules it is laid down that an institution receiving recurring financial assistance in any shape or form from the State

Government either for maintenance or for payment of salary and/or allowances of teachers and/or other employees thereof shall be treated as an

aided institution for the purposes of the said rules. The Learned Judge on an in-depth consideration of the matter observed, in the background of

the fact that the school received financial assistance from the Government for payment of dearness allowance to the teachers, that the purpose of

the rule was not to enable the Government to interfere with the day to day management of the school or the working of the school but to confer

some rights upon the employees to get further extension of service under certain circumstances and that a minority establishment had to conform to

the laws of the land unless it could be shown that the condition was unreasonable or enerous and could not be carried out without causing damage

to the minority character of the institution. It was further observed by the learned Judge that if something were done in violation of law by a minority

institution, it could not be said that merely because it was a minority institution, such law could not be enforced. It was held by the learned Judge

that the school having enjoyed the benefit of affiliation and considerable financial assistance was bound to follow rule 28 of the Management Rules

and that the directions in the matter of extension of service given by the Board were binding upon the school. As we have seen, in our present case

also the school, although a private school, has obtained recognition from the Board of Secondary Education and also receives financial assistance

from the Government in the shape of dearness allowance for teachers. In the circumstances, the petitioner who is a teacher of the school claims the

benefit of higher scale on the basis of a circular issued by the Government which is applicable to all schools. Therefore the ratio of the Single Bench

decision of Suhas Chandra Sen, J. (as his Lordship then was) is also applicable to the present case. But it is argued on behalf of the contesting

respondents that the said Single Bench decision is a decision per incurium inasmuch as it did not consider the earlier decision of this court reported

in 85 CWN 113 and at any rate this Single Bench decision rendered on 11th October, 1988 stands superseded and overruled by the later Division

Bench decision of this court dated the 10th September, 1989 in C.O. No. 15797(W) of 1986 (supra). To this, the learned Advocate for the

petitioner submits that the said decision of the Division Bench of this court itself is rather a decision per incurium inasmuch as the same did not take

into consideration the earlier decision of the Supreme Court in Frank Anthony Public School Employees'' Association Vs. Union of India (UOI)

and Others, and at any rate the present case is clearly covered by the ratio of the said Supreme Court decision and other Supreme Court decisions

as well, and that being so, in view of the Supreme Court decisions the petitioner is entitled to relief in this writ petition.

7. However, before I proceed to discuss the Supreme Court derisions I would like to mention that the learned Advocate for the petitioner has also

attracted my attention to Memo No. 2505(16) G.A. dated 30th December. 1974 issued by the Government of West Bengal, Education

Directorate on the subject of approval of appointment of teaching and non-teaching staff of High and Higher secondary Schools and extention of

services of such staff beyond the age of superannuation recommended by the Managing Committee. It is stated in the said memo inter alia that the

secondary schools including the schools raised from junior high stage which are in receipt of Government D.A. only are also to be treated as aided

institutions. It is therefore argued on behalf of the petitioner that the receipt of Government D.A. alone makes the respondent school an aided

institution and therefore, the circulars issued by the Government for aided institutions are applicable to the respondent school also. The learned

Advocate for the petitioner has also relied upon in this connection the decision of the Supreme Court in Unni Krishnan, J.P. and others Vs. State of

Andhra Pradesh and others etc. etc., In paragraph 162 of the said decision it has been observed by the Supreme Court that private educational

institutions may be aided as well as unaided and that aid given by the Government may be cent percent or partial. It has been further observed

therein that so far as aided institutions are concerned, it is evident, they have to abide by all the rules and regulations as may be framed by the

Government and/or recognizing/affiliating authorities in the matter of recruitment of teachers and staff, their conditions of service, syllabus, standard

of teaching and so on. Therefore, this decision of the Supreme Court also makes it clear that even partial aid from the Government makes the

institution on aided institution and renders it liable to abide by all the rules and regulations that might have been framed by the Government and/or

recognising/affiliating authorities on a variety of matters including the service condition of teachers. Obviously, any circular of the Government

regarding enticement of higher pay scale for teachers who improved their educational qualifications concers the service conditions of teachers and

as such, in view of the said Supreme Court decision, any private educational institution receiving even partial aid in the form of Government D.A. is

amenable to such Government circular. The learned Advocate for the petitioner has also relied on the decision of the Supreme Court in Francis

John Vs. Director of Education and Others, It has been observed by the Supreme Court in paragraph 9 of the said decision that any private school

which receives aid from the Government under the grant-in-aid code, which is promulgated not merely for the benefit of the Management but also

for the benefit of the employees in the school for whose salary and allowances the Government was contributing from the public funds under the

grant-in-aid code can not escape from the consequences flowing from the breach of the Code.

8. The said two decisions of the Supreme Court namely. Unni Krishnan v. State of A.P. and Francis John v. Directorate of Education (supra)

would have been sufficient to dispose of the writ petition by holding that since the school receives aid in the form of Government D.A. for its

teachers and thus becomes a Government aided institution it is bound to comply with the Government circulars relating to the service conditions of

teachers including eligibility for higher pay scale on improving qualification, and the petitioner is therefore entitled to the relief of higher pay scale as

claimed. But in the present case a question has also been raised on behalf of the contesting respondents that since the school is established and

managed by the Society of a linguistic minority group, it is entitled to the protection of Article 30(1) of the Constitution of India and as such the

Government circular regarding the admissibility of higher pay scale for teachers is not applicable to the school or to the petitioner who is a teacher

of the school. This point however is completely covered by the decision of the Supreme Court in Frank Anthony Public School Employees''

Association Vs. Union of India (UOI) and Others, which I have mentioned earlier. Frank Anthony Public School is a minority school in New

Delhi. The said school however was not receiving any financial aid from the Government. The teachers and employees of the school lagged far

behind the teachers and employees of the Government schools in the matter of pay scales and conditions of service. The Frank Anthony Public

School Employees Association by writ petition sought equalisation of their pay scales and conditions of service with those of teachers and

employees of Government schools. Sections 8 to 12 of the Delhi School Education Act together comprise Chapter IV of that Act which deals

''terms and conditions of service of employees of recognised private schools''. Section 1091) of the said Act requires that the scales of pay and

allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of a recognised private school shall

not be less than those of the employees of the corresponding status in the schools run by the appropriate authority. The Act also defines

appropriate authority in Section 2(e) to mean inter alia in the case of a school recognised by an authority designated or sponsored by the Central

government, that authority, in the case of a school recognised by the Delhi Administration, the Administrator or any other officer authorised by him

in this behalf, and in the case of school recognised by Municipal Corporation of Delhi, that Corporation. The proviso to Section 10(1) requires the

appropriate authority to direct in writing the Managing Committee of any recognised private school to bring the scales of pay and allowances etc.

of all the employees of such schools to the level of those of the employees of the corresponding status in schools run by the appropriate authority.

A further proviso to Section 10(1) contemplates withdrawal of recognition if such direction is not complied with. But for Section 12 the provisions

of Section 10 would have been applicable to a recognised minority private school, such as. the Frank Anthony Public School also and in that case

the teachers and employees of the school would also be entitled to the same pay scales and other benefits mentioned therein as would have been

applicable to the teachers and employees of a recognised private school which were also required to be not less than those of the teachers and

employees of the corresponding status in schools run by the appropriate authority. The teachers of the Frank Anthony Public School were

however getting much lower salary and were enjoying lower pay scales than those who were employed in other recognised private schools or

Government schools. This happened because of the existence of Section 12 in Chapter IV of the said Act, Section 12 provides that nothing

contained in the said chapter shall apply to an unaided minority school. Therefore, the beneficial provisions regarding pay scales and other service

conditions which were incorporated in Chapter IV of the said Act were not made applicable to the teachers and employees of the Frank Anthony

Public School which was an unaided minority school.

9. As I have already mentioned, by a writ petition the Frank Anthony Public School Employees Association challenged Section 12 on the ground

that the same was violative of Article 14 of the Constitution. The school authorities as well as the Government wanted to sustain the vires of the

said Section 12 on the ground that the school was entitled to the protection of Article 30 of the Constitution and as such the Government could not

impose on the school the burden of higher pay scales and other benefits for the teachers and staff as that would infringe upon the right of the

minorities to administer educational institution of their choice as guaranteed by Article 30. The Supreme Court, however, in the case of Frank

Anthony PSE Assn. (supra) after detailed analysis of all relevant aspects of the matter and after considering the earlier judicial decisions having

bearing on the point upheld the contention of the writ petitioners and declared that Section 12 of the Delhi School Education Act which made the

provisions of Chapter IV inapplicable to unaided minority institutions is discriminatory and void (except to the extent it made Section 8(2)

inapplicable to unaided minority institutions for reasons discussed in the decision which aspect is however not material for our purpose). The

Supreme Court also directed the Union of India and the Delhi Administration and its officers to enforce the provisions of Chapter IV (except

Section 8(2) in the manner provided in the Chapter in the case of Frank Anthony Public School. Our present case is also governed by the ratio of

the said decision of the Supreme Court. In the present case the Government circular on the basis of which the petitioner claims higher pay scale for

improving his educational qualifications purportingly unrestricted in its application and therefore by its natural import it applies to all recognised

schools including minority schools. As we have already seen the respondent school in the present ease falls within the ambit of aided schools for

reasons we have already discussed But even then in view of the ratio of the said decision of the Supreme Court the question whether the school is

aided or unaided pales into insignificance inasmuch as the question is whether the authorities of the school which is indeed a recognised school can

deprive its teachers of the benefit of the pay scales which the concerned government circular makes applicable to the qualified teachers of all

schools and the benefit of which the teachers of other recognised private schools are enjoying in appropriate cases. The non-application of the

concerned government circular to the respondent school, in view of the said Supreme Court decision in the case of Frank Anthony P.S.E.

Association (supra) would be discriminatory and violative of Article 14.

10. The provisions regarding the pay scales of teachers and the conditions of eligibility for pay scales or higher pay scales are regulatory in nature

and can not be construed as interference with the management of the school run by a linguistic minority group. The right to administer obviously can

not include the right to maladminister as has been held by the Supreme Court. The said decision of the Supreme Court in Frank Anthony (supra)

also makes it clear that the conditions of service which prescribe minimum qualification for the staff, their pay scales, their entitlement to other

benefits of service and the laying down of dismissed from service are all permissible measures of a regulatory character and that the conditions

imposing the minimum qualifications of the staff, their pay and other benefits, their service conditions, the imposition of punishment will all be

covered and regulations of such a nature have been held to be valid - (vide para 12. ibid). In paragraph 15 of the said decision also it has been

noted that the conditions of employment of teachers was a regulatory measure conducive to uniformity, efficiency and excellence in educational

courses and did not violate the fundamental right of the minority institutions under Article 30. In the said paragraph 15 it has also been observed

that mere prescription of scales of pay and other conditions of service would not jeopardise the right of the management of minority institutions to

appoint teachers of their choice. In paragraph 16 of the said decision in Frank Anthony (supra) it has been observed thus:

16. The excellence of the instruction provided by an institution would depend directly on the excellence of the teaching staff, and in turn, that would

depend on the quality and the contentment of the teachers. Conditions of service pertaining to minimum qualifications of teachers, their salaries,

allowances and other conditions of service which ensure security contentment and decent living standards to teachers and which will consequently

standards to teachers and which will consequently enable them to render better service, to the institution and the pupils can but surely be said to be

violative of the fundamental right guaranteed by Article 30(1) of the Constitution. The management of a minority educational institution can not be

permitted under the guise of the fundamental right guaranteed by Article 30(1) of the Constitution, to oppress or exploit its employees any more

than any other private employee. Oppression or exploitation of the teaching staff of an educational institution is bound to lead, inevitably, to

discontent and deterioration of the standard of instruction imparted in the institution affecting adversely the object of making the institution an

effective vehicle of education for the minority community or other persons who resort to it. The management of minority institution cannot complain

of invasion of the fundamental right to administer the institution when it denies the members of its staff the opportunity to achieve the very object of

Article 30(1) which is to make the institution an effective vehicle of education.

In paragraph 17 of the said decision in Frank Anthony (supra) the Supreme Court observed thus:

17. We, therefore, held that Section 10 of the Delhi Education Act which reguires that the scales of pay and allowances, medical facilities, pension,

gratuity, provident fund and other prescribed benefits of the employees of a recognised private school shall not be less than those of the employees

of the corresponding status in schools run by the appropriate authority and which further prescribes the procedure for enforcement of the

requirement is a permissible regulation aimed at attracting competent staff and consequently at the excellence of the educational institution. It is a

permissible regulation which in no way detracts from the fundamental right guaranteed by Article 30(1) to the minority institutions to administer their

educational institutions. Therefore, to the extent that Section 12 makes Section 10 inapplicable to unaided minority institutions, it is clearly

discriminatory.

11. In our present case also denial of the benefit of the government circular for higher pay scale on acquisition of higher educational qualification to

the petitioner, simply because he is a teacher of a recognised minority institution while such benefit will be available to the duly qualified teachers of

other institutions, will be discriminatory and violative of Article 14 of the Constitution of India and this is the inescapable position in view of the

consistent decisions of the Supreme Court including the one in Frank Anthony P.S.E. Association v. Union of India (supra) where all earlier

decisions in the matter have also been elaborately discussed.

12. It has been argued before me on behalf of the school authorities that the school will not be in a position to bear the burden of the higher pay

scale if the concerned government circular is made applicable to this school. Similar argument was also made before the Supreme Court on behalf

of the respondents in the Frank Anthony P.S.E. Association v. Union of India (supra) and the Supreme Court in paragraph 23 of the said decision

dealt with the same in the following manner:

23. We must refer to the submissions of Mr. Frank Anthony regarding the excellence of the institution and the fear that the institution may have to

close down if they have to pay higher scales of salary and allowances to the members of the staff. As we said earlier the excellence of the institution

is largely dependent on the excellence of the teachers and it is no answer to the demand of the teachers for higher salaries to say that in view of the

high reputation enjoyed by the institution for its excellence, it is unnecessary to seek to apply provisions like Section 10 of the Delhi School

Education Act is the Frank Anthony Public School. On the other hand, we should think that the very contribution made by the teachers to earn for

the institution the high reputation that it enjoys should spur the management to adopt at least the same scales of pay as the other institutions to

which Section 10 applies. Regarding the fear expressed by Shri Frank Anthony that the institution may nave to close down, we can only hope that

the management will be nothing to the nose to spite the face, merely to "put the teachers in their proper place". The fear expressed by the

management here has the same ring as the fear expressed invariably by the management of every industry that disastrous results would follow

which may even lead to the closing down of the industry if wage scales are revised.

In view of the said Supreme Court decision and the other Supreme Court decisions therein as well as the later Supreme Court decisions earlier

discussed by me it must be held that concerned government circular is also applicable to the respondent school and the petitioner is entitled to the

higher pay scale in accordance with the concerned government circular. In the circumstances. I direct the respondents including District Inspector

of Schools (S.E.) Calcutta to give the benefit of the post graduate scale to the petitioner with effect from the appropriate date in 1988 in

accordance with the Government of West Bengal. Education (Budget Branch) Department memo no. 400_EDN. (B) dated the 10th September,

1991. Such benefit shall be given within six weeks from the date of communication of this order. Both the writ petitions stand disposed of

accordingly. There will however be no order as to costs.