

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE SMT.JUSTICE P.V.ASHA

THURSDAY, THE 3RD DAY OF DECEMBER 2015/12TH AGRAHAYANA, 1937

WA.No. 2173 of 2015 IN WP(C).14277/2014

AGAINST THE JUDGMENT IN WP(C) 14277/2014 of HIGH COURT OF KERALA DATED 4.6.2015

APPELLANTS/PETITIONERS 1-6, 8-21, 24-30 IN W.P(C):-

1. K. SHANTHINI MENON
PRE-PRIMARY TEACHER, TK.D.U.P.SCHOOL, PAYYALORE
KOLLENGODE.P.O., CHITTUR, PALAKKAD DISTRICT
PIN - 678 506.
2. KANITHA, PRE-PRIMARY TEACHER, K.K.M.L.P.S., VANDITHAVALAM
PALAKKAD DISTRICT, PIN - 678 534.
3. A.MINIMOL, PRE-PRIMARY TEACHER, A.M.M.U.P.S., VADAVANNUR
PALAKKAD DISTRICT, PIN - 678 506.
4. BINITHA K., PRE-PRIMARY TEACHER, K.K.M.L.P.S., PALAKKAD DISTRICT, PIN - 678 534.
5. PRABHAVATHY V., PRE-PRIMARY TEACHER, K.K.M.L.P.S., PALAKKAD DISTRICT, PIN - 678 534.
6. BINDU M., PRE-PRIMARY TEACHER, K.K.M.L.P.S., VANDITHAVALAM
PALAKKAD DISTRICT. PIN - 678 534.
7. BINDU R., PRE-PRIMARY TEACHER, K.K.M.L.P.S., VANDITHAVALAM
PALAKKAD DISTRICT, PIN - 678 534.
8. GEETHA R., PRE-PRIMARY TEACHER, K.K.M.L.P.S., VANDITHAVALAM
PALAKKAD DISTRICT, PIN - 678 534.
9. JYOTHI A., PRE-PRIMARY TEACHER, A.U.P.S., PANANGATTIRI
KOLLENGODE, PALAKKAD DISTRICT, PIN - 678 506.
10. SAJITHA K., PRE-PRIMARY TEACHER, A.U.P.S., PANANGATTIRI
KOLLENGODE, PALAKKAD DISTRICT, PIN - 678 506.
11. ANITHA K., PRE-PRIMARY TEACHER, A.U.P.S., PANANGATTIRI
KOLLENGODE, PALAKKAD DISTRICT, PIN - 678 506.
12. SANDHYA S., PRE-PRIMARY TEACHER, A.U.P.S., PANANGATTIRI
KOLLENGODE, PALAKKAD DISTRICT, PIN - 678 506.
13. RADHAMANI C, PRE-PRIMARY TEACHER, S.B.S., OLASSERRY.P.O.
KODUMBU, PALAKKAD DISTRICT, PIN - 678 551.
14. SINI S., PRE-PRIMARY TEACHER, S.B.S., OLASSERRY.P.O.
KODUMBU, PALAKKAD DISTRICT, PIN - 678 551.
15. SREEJA K., PRE-PRIMARY TEACHER, A.U.P.S., ALAMPALLAM
KOLLENGODE, PALAKKAD DISTRICT, PIN - 678 506.
16. VISHNU PRIYAK, PRE-PRIMARY TEACHER, A.L.P.S., THANNISSERI.P.O.
PALAKKAD DISTRICT, PIN - 678 501.

17. KUMARI S., PRE-PRIMARY TEACHER, S.S.K.A., S.N.U.P. SCHOOL
THEKKEGRAMAM, CHITTUR, PALAKKAD DISTRICT, PIN - 678 103.
18. KARTHIKA C., PRE-PRIMARY TEACHER, C.J.B.SCHOOL, KINASSERRY
PALAKKAD DISTRICT, PIN - 678 701.
19. LATHIKA V., PRE-PRIMARY TEACHER, C.J.B. SCHOOL, KINASSERRY
PALAKKAD DISTRICT, PIN - 678 701.
20. SUMATHI K., PRE-PRIMARY TEACHER, S.L.L.P.SCHOOL, PILAPULLY
VADAVANOOR.P.O., PALAKKAD DISTRICT, KOLLENGODE, PIN - 678 504.
21. KUMARI V., PRE-PRIMARY AYAH, K.K.M. L.P.S., VANDITHAVALAM
PALAKKAD DISTRICT, PIN - 678 534.
22. GEETHA R., PRE-PRIMARY AYAH, K.K.M. L.P.S., VANDITHAVALAM
PALAKKAD DISTRICT, PIN - 678 534.
23. SUMITHA P., PRE-PRIMARY AYAH, K.K.M. L.P.S., VANDITHAVALAM
PALAKKAD DISTRICT, PIN - 678 534.
24. MADURA C., PRE-PRIMARY AYAH, A.M.M.U.P. SCHOOL, VADAVANOOR, PALAKKAD DISTRICT.
25. MALINI C., PRE-PRIMARY AYAH, T.K.D.U.P.SCHOOL, PAYYALORE
KOLLENGODE, PALAKKAD DISTRICT, PIN - 678 506.
26. USHA K., PRE-PRIMARY AYAH, A.U.P.SCHOOL, PANANGATTIRI
KOLLENGODE, PALAKKAD DISTRICT.
27. DEVI M., PRE-PRIMARY AYAH, A.U.P.SCHOOL, ALAMPALLAM
KOLLENGODE, PALAKKAD DISTRICT, PIN - 678 506.

BY ADVS.SRIABRAHAM VAKKANAL (SR.)
SRI.PAUL ABRAHAM VAKKANAL
SRI.DIJO SEBASTIAN

RESPONDENTS/PETITIONERS 17, 22-23, IN WP(C):-

1. STATE OF KERALA, REPRESENTED BY SECRETARY TO GOVERNMENT
DEPARTMENT OF GENERAL EDUCATION, SECRETARIAT
THIRUVANANTHAPURAM - 695 001.
2. THE DIRECTOR OF PUBLIC INSTRUCTION, THIRUVANANTHAPURAM - 695 001.
3. JALAJA K., PRE-PRIMARY TEACHER, D.M.U.P. SCHOOL, KARIMKULAM
ELAVANCHERRY, PALAKKAD DISTRICT.
4. SUMA M., PRE-PRIMARY TEACHER, A.L.P.S., NENMANI
KOLLENGODE, PALAKKAD DISTRICT, PIN - 678 506.
5. SHEELA M., PRE-PRIMARY TEACHER, K.S.B.SCHOOL, KARIPODE
PALAKKAD DISTRICT, PIN - 678 503.

R BY SR. GOVERNMENT PLEADER T.T.MOHAMOOD
ADDL. A.G. SRI.K.A.JALEEL

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 03-12-2015, ALONG WITH WA. 2189/2015, WA. 2190/2015, WA. 2191/2015, WA. 2198/2015, WA. 2241/2015 & WA. 2623/2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & P.V.ASHA, JJ.

**Writ Appeal Nos.2173, 2198, 2189, 2191,
2190, 2241 & 2623 of 2015**

Dated this the 3rd day of December, 2015

JUDGMENT

Antony Dominic, J.

These appeals are filed by the petitioners in W.P.(C) Nos.14277/14, 19094/14, 18949/14, 33825/14, 18943/14, 19066/14 and 27938/14 which were disposed of by a common judgment rendered by the learned Single Judge on the 4th June, 2015. Since the issues raised are common, these cases were heard together and are disposed of by this common judgment, treating WA.2190/15, arising out of the judgment in W.P.(C)18943/14, as the leading case.

2. We heard the learned Senior Counsel appearing for the appellants and the learned Additional Advocate General appearing for the respondents.

3. The appellants in all these appeals are pre-primary teachers in various aided schools, who are appointed by the Parent Teachers Association of the school concerned. In the writ petitions, a declaration that they are entitled to get salary/honorarium at the rate as fixed in

the judgment of this court in Writ Appeal No.205/11, a copy of which is Ext.P4, and in the consequential orders that were issued in implementation thereof, was sought for. Further orders were also sought for.

4. In the common judgment under appeal, the learned Single Judge took the view that having regard to the provisions of the Kerala Education Act and the Rules, only schools which are recognised to receive aid alone would oblige the Government to pay salary to the teaching and non teaching staff and that the teachers and Ayahs working in the pre-primary schools in the aided schools are concerned, they have no legal relationship with the Government and that, therefore, the Government did not have the obligation to pay salary/honorarium as claimed by the appellants.

5. However, in paragraph 14 of the judgment the learned Single Judge ordered thus:

“However, the State machinery shall not fail to ensure at least minimum amount ordered in the writ appeal judgment, be paid by the Management or the Parent-Teachers Association to the petitioners. The State shall take necessary steps to ensure that the

Management and Parent - Teachers Association pay the amount ordered in writ appeal judgment to the petitioners or like. Needful shall be done by the Government within three months."

6. It is aggrieved by this common judgment, these appeals are filed.

7. Since one of the issues raised in these appeals is the plea for equal pay for equal work, at the outset, we may record the factual aspect that in pursuance to the directions in paragraph 14 of the judgment, referring to the judgment, order dated 1.10.15 was issued by the Additional Chief Secretary to the Government to the Director of Public Instructions, in which it is inter alia stated thus:

"In the judgment read as 3rd paper above, Hon'ble High Court has directed "the State machinery shall not fail to ensure that at least the minimum amount ordered in the Writ Appeal judgment 205/2011 be paid by the Management or the PTA to the petitioners. The State shall take necessary steps to ensure that the Management or the PTA pay the amount ordered in the WA judgment to the petitioners".

In the above circumstances, I am to request you to take necessary steps to ensure that the minimum amount ordered in the writ appeal judgment dated 1.8.2012 is being paid by the Management of the

Aided Schools or the PTA to the Teachers and Ayahs working in the pre-primary section in the aided schools."

8. In compliance with the directions in the above order dated 1.10.2015, the Director of Public Instructions has issued order dated 4.11.2015 to the Deputy Directors, where he has directed thus:

“ആയതിനാൽ താങ്കളുടെ അധികാരപരിധിയിൽ വരുന്ന എയിഡഡ് സ്കൂളുകളോടനുബന്ധിച്ചു പ്രവർത്തിക്കുന്ന പ്രീ-പ്രൈമറി വിഭാഗത്തിലെ അധ്യാപകർക്കും ആയമാർക്കും മാനേജ്മെന്റുകൾ/പിറ്റി എ നൽകുന്ന ഓണറേറിയത്തെ സംബന്ധിച്ച് സ്കൂളുകൾ സന്ദർശിച്ച്, ബന്ധപ്പെട്ട രേഖകൾ പരിശോധിച്ച് വിശദമായ റിപ്പോർട്ട് 15 ദിവസത്തിനകം ഈ കാര്യാലയത്തിൽ സമർപ്പിക്കേണ്ടതാണ്. കോടതിവിധി നടപ്പിലാക്കുന്നതിനു സമയപരിധി നിശ്ചയിച്ചിട്ടുള്ളതിനാൽ കാലതാമസം ഉണ്ടാകാതിരിക്കുവാൻ പ്രത്യേകം ശ്രദ്ധിക്കേണ്ടതാണ്.”

9. This therefore means, that the plea for equal pay, does not survive any more to be considered. Against Ext.P4 judgment, though the Government and DPI filed SLP in the Supreme Court, the same was also dismissed vide Ext.P4(a) order.

10. In these appeals, the main contention raised by the learned Senior Counsel for the appellants is that in Ext.P4 judgment in W.A.No.205/11, which was confirmed by the Apex Court, after appreciating the provisions of the Right of the Children to Free &

Compulsory Education Act (hereinafter referred to as 'the Act') this court held that pre-primary education is a fundamental right of the children of this country and is a part of the elementary education. It is stated that it is on that basis this court has directed the enhancement of wages/honorarium of pre-primary teachers or ayahs of pre-primary sections in Government Schools, who are appointed by the Parent Teachers Association of the school concerned. According to the counsel, having thus recognized pre-primary education as a fundamental right and as a part of the elementary education, the appellants being similarly appointed by the Parent Teachers Associations of aided schools concerned, are also entitled to similar benefit, applying the principles of Article 14 of the Constitution of India and also the principle of equal pay for equal work as enshrined by the Apex Court in its various judgments.

11. However, this contention is refuted by the learned Additional Advocate General, who appeared on behalf of the respondents. According to him, neither Ext.P4 judgment nor the provisions of the Act recognize pre-primary education as a part of the elementary education. In so far as Ext.P4 judgment is concerned, it is contended that the pre-

primary sections were started in the Government schools at the instance of the Government and Government Orders were issued permitting the Parent Teachers Associations to appoint teachers and ayahs in the pre-primary section. Even prior to Ext.P4 judgment, Government was paying honorarium to the teachers/ayahs working in the pre-primary section in the Government schools and what was ordered in Ext.P4 judgment is revision of such payments. In so far as a pre-primary school in the aided schools and the appointments made by the Parent Teachers Associations of those schools are concerned, according to the Additional Advocate General, Government have no role or other involvement, to make the Government liable for the wages/honorarium to be paid to them. It was also contended that though Ext.P4 judgment recognizes pre-primary education as a fundamental right, the Government have established pre-primary section in the Government schools and also in the 'Anganawadis' that are established in the State. It is, therefore, stated that the Government cannot be made liable for wages/honorarium that are claimed by the teachers/ayahs in the pre-primary section in the aided schools. The

learned Additional Advocate General also brought to our notice the order dated 1.10.2015 issued by the Additional Chief Secretary to the Government and the order dated 4.11.2011 issued by the Director of Public Instructions, referred to in the earlier part of this judgment, and submitted that orders have already been issued in compliance with the directions in paragraph 14 of the judgment.

12. The first issue that arises to be considered in these cases is whether there is any substance in the contention raised by the learned Senior Counsel for the appellants that pre-primary education is a part of the elementary education. This issue will have to be answered with reference to the provisions contained in the Right of Children to Free & Compulsory Education Act and Rules. Section 2(c) of the Act defines “child” as a male or female child of the age of six to fourteen years. Section 2(f) defines “elementary education” as education from first class to eighth class. The provisions regarding ‘right to free and compulsory education’ are contained in Chapter II of the Act. As per Section 3 of the Act, every child of the age of six to fourteen years shall have the right to free and compulsory education in a neighbourhood

school till the completion of his or her elementary education. These provisions of the Act would, therefore, show that by Section 3 of the Act, the State has recognized the right of every child of the age of 6 to 14 years to have compulsory education in the neighbourhood school. That right is till the completion of his or her elementary education and the term “elementary education” is defined in Section 2(f) as the education from the first class to the eighth class.

13. On the other hand, the obligation of the State to provide pre-school education is contained in Section 11 of the Act, which provide that with a view to prepare children above the age of three years for elementary education and to provide early childhood care and education for all children until they complete the age of six years, the appropriate Government may make necessary arrangement for providing free pre-school education for such children. This, therefore, shows that pre-school education is ordered to be provided for the purpose of preparing children above the age of three years for elementary education. These provisions, therefore, establish beyond any doubt that pre-school education is not a part of the elementary

education and the idea of pre-school education is conceived for the purpose of preparing children above the age of three years for elementary education. In Ext.P4 judgment rendered by this court also, this distinction has not been lost sight of and it was, therefore, that this court said that unless pre-school education is also made part of elementary education at the cost of the Government atleast for the poor people, the object of the Act cannot be achieved. For these reasons, we are unable to endorse the contention of the learned Senior Counsel appearing for the appellants that pre-school education is a part of elementary education and that, therefore, the obligation of the State as contained in the Act would apply to pre-school education also.

14. The remaining question is whether there is any substance in the claim of the appellants that the Government is obliged to pay them wages/honorarium on a par with what is being paid to their counterparts employed in the pre-school section in the Government Schools. As we have already stated, pre-school sections in the Government schools were established on the orders issued by the Government from time to time and appointments were also made by the

Parent Teachers Association in pursuance to the orders issued by the Government. The appointees were being paid by the Government at the rates as prescribed by it from time to time and considering the fact that the rate of payment made to these appointees was unsatisfactory this court in Ext.P4 judgment directed that they be paid reasonable wages. It was thereafter that as an adhoc measure, it was ordered that they be paid the amounts as fixed. However, in so far as the aided schools are concerned, these schools are bound by the Kerala Educational Act and Rules. The provisions in the Act and Rules, as rightly noticed by the learned Single Judge, oblige the Government to pay wages only to the teachers and non teaching staffs of aided schools. That obligation cast in the Government under the Act and the Rules cannot be stretched to force the Government to pay wages to the teachers/ayahs appointed in the pre-school section of the aided schools who are all appointed by the Parent Teachers Association. Therefore, we are unable to accept the contention of the learned counsel for the appellant that the Government has obligation to pay them what is paid to their counterparts employed in the pre-school section of the Government Schools.

15. In so far as the claim of the appellants that they are entitled to equal pay at the rate as fixed by this court in Ext.P4 is concerned, though we cannot accept that the liability to pay the same rests on the Government, in paragraph 14 this court has issued appropriate directions to take care of that grievance of the appellants. In compliance with these directions, the Government and the Director of Public Instruction have issued orders dated 1.10.2015 and 4.11.15, the relevant portion of which has already been extracted in the earlier part of this judgment. Therefore, that complaint has already been addressed by the Government and this grievance does not survive any more.

For these reasons, we do not find any merit in these appeals. Appeals fails and are accordingly dismissed.

Sd/-
ANTONY DOMINIC
JUDGE

Sd/-
P.V.ASHA
JUDGE

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