

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 18.1.2017

Pronounced on: 28.03.2017

CORAM:

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.27604 of 2011

Holy Cross Lay Staff Association,
rep.by its President No.888,
Selvanagar, K.N.Colony Post,
Salem - 636 014.
(Reg.No.288/2009

... Petitioner

vs.

- 1.The Director of Matriculation School,
Chennai - 6.
- 2.The Chief Educational Officer,
Salem.
- 3.The Inspector of Matriculation Schools,
Salem.
- 4.The Principal and Correspondent,
Holy Cross Matriculation Higher
Secondary School, Salem.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents 1 to 3 to take action for implementing the Government Scale of Pay to the members of the petitioner association, particularly, giving retrospective effect to VI Pay Commission, with effect from 1.6.2006, Selection Grade and Special Grade Stagnation/Increment, Increased Dearness Allowance, hike in the Grade Pay, Corresponding Pay Bank to the members of the petitioner Association working in the fourth respondent school and confer all the consequential benefits.

For petitioner : Mr.C.Selvaraj
Senior Counsel
for M/s.C.S.Associates

For respondents 1 to 3 : Mrs.P.Rajalakshmi,
Government Advocate

For 4th respondent : Mr.Isaac Mohanlal
Senior Counsel

ORDER

The petitioner has filed the present Writ Petition for the relief stated above.

2. In the affidavit filed in support of the Writ Petition, the petitioner has stated that the fourth respondent management appointed teaching and non-teaching staff on the assurance of the scale of pay, applicable to the Government teaching and non-teaching staff and in fact, they have reduced in writing by way of agreement signed by both parties. The School is also governed by the Matriculation Schools Regulations, under which recognition was given. The members of the association were honoured and treated decently and this is how the petitioner association members are working in the school for year together. The list of members of the petitioner association and their service particulars have been filed in the typed set of papers. Right from the date of appointment, Pay, Allowance and other perquisites of the petitioner association members were on par with that of the Government School staff, including the Pay Revision when made by the Government for their staff, upto the Revised Pay Commission Rules 1996 which was introduced in between V and VI Pay Commission. The V Pay Commission was given effect from 1.6.1988, and the Revised Scale of Pay 1996 was given effect from 1.1.1996 and VI Pay Commission which was given with effect from 1.6.2006.

3. It is further stated by the petitioner that though they have been given Pay Revision implementing the Government Scale of Pay upto the revised Scale given in 1996 they did not give the Revision of Pay in full for the VI Pay Commission which was implemented and given to all the Government servants with effect from 1.6.2006. They have given only Grade Pay and Pay Band has not been given. So, the matter was brought to the association by the members of teaching and non-teaching staff. The moment, it was brought to the notice of the association,

they made representation to the fourth respondent on 7.3.2009, followed by various reminders. So far, they have not taken any steps. Hence, the petitioner association was constrained to file the present Writ Petitioner with the aforesaid prayer.

4. On the contrary, refuting the allegations of the petitioner association, the fourth respondent has filed a counter affidavit dated 29th day of November, 2012. In the counter affidavit, it is stated that the fourth respondent school is a Minority Educational Institution. It is run by the Social Society of the Brothers of Holy Cross which is a religious charitable society consisting of the Rev. Brothers of the Roman Catholic Order of Christianity. The Society is registered under the Societies Registration Act bearing Reg.No.55/79-80. This School has been approved by the first respondent/Directorate of Matriculation Schools, Chennai. The majority of the students in the school hail from very low economic strata - mainly, children of Mill Workers and field workers. Orphans, destitute and poor children are studying in the School. Education is given as a charitable mission and the fee collected is only to meet out the day-to-day expenditure. The school has been providing free-scholarships for the orphan and the destitute children. The school has been paying adequate pay to the staff members. The substantial portion of the fee collected is paid to the staff as salary. There are 162 staff working in the school now. The teachers and other staff were employed on the basis of qualifications and suitability on contractual terms. No discrimination is shown on the ground of religion, caste or language. They are given scales of pay which is almost similar to the pay in the Government and other aided Schools. The pay is revised periodically. Allowances like Dearness Allowance, House Rent Allowance etc., are given to the staff of the school. Provident Fund is arranged. Special Grade and Selection Grade are awarded for every ten years of service. The children of the staff are given priority in admission and fee concession. The staff are given Maternity Leave with full pay and other Leave facilities. The School has never made any commitment either in the appointment order or in the promotion order that the scales of pay and other allowances would be paid on par with that of the Government teachers. Every time, when the hike is made in the pay of the staff, it results in the enhancement of the fee which seriously affects the interest of the students. It is further stated that the teachers in Matriculation Schools do not fall equal to the teachers of Government Schools in all respects. Their nature of work, the terms of employment and the conditions of service are not on par with that of the Government staff. The staff in the fourth respondent school are paid adequate salary commensurate with their work and qualification. The employees in Matriculation Schools are normally not transferable whereas in the case of Government,

they are transferable.

5. The petitioner filed rejoinder to the counter affidavit filed by the fourth respondent. In the rejoinder, he submitted that though the stand of the fourth respondent that the School is run for the students who hail from very low economic strata, children of Mill Workers and Field Workers, is without any substance. On the other hand the School is run for the children of affluent family, because in their prospectus, they have specifically mentioned that the Holy Cross International School contain various facilities including swimming pool etc.,. It is further stated that the management is collecting not only tuition fees but also huge amount by way of donation under receipt. The amounts have been deposited in Indian Overseas Bank. Every year, the school is collecting Rs.8.50 crores whereas they are paying only Rs.2 crores to the teaching and non-teaching staff per year. Almost all the teachers are stagnating without any promotion in the same post. Whenever vacancy arises in the higher post, they directly fill up the same from the open market collecting huge amount. Promotions are considered only for the selective people and even for those promotees, salary is not given in the promoted post. As such, the petitioner has prayed this Court that the present Writ Petition be allowed.

6. Mr.C.Selvaraj, learned Senior Counsel appearing for the petitioner, reiterating the averments made in the affidavit as well as additional affidavit filed in support of the Writ Petition, submitted that the fourth respondent School is a minority institution. The fourth respondent management appointed the teaching and non-teaching staff on the assurance of the scale of pay applicable to the Government teaching and non-teaching staff. Though they have been given Pay Revision implementing the Government Scale of Pay upto the revised Scale given in 1996, they do not give the Revision of Pay in full for the VI Pay Commission which was implemented and has been given to all the Government servants with effect from 1.6.2006. They have been given only Grade Pay and Pay Band has not been given. The Regulation 18 of the Matriculation Schools Regulation stipulates that the staff employed by the Matriculation Schools must be paid salary applicable to the Government staff. The Regulation reads as follows:-

"18.(ii) The Staff in Matriculation Schools will be paid at the rate of Government scales of pay and they are eligible for selection grade after 10 years of service as in other recognised schools. The teachers and other persons employed in Matriculation Schools shall be governed by the Code of Conduct as specified in Annexure VII."

The learned Senior Counsel further submitted that Rule 15 of the Brothers of the Holy Cross of India Employees Service Rules recommends the management to give scale of pay as recommended by the Government. The agreement entered into between the staff and the management also reflect the time scale of pay structure which was in existence at the time of appointment. In fact, in the letter of agreement itself, one of the clause specifically states that if any person is aggrieved that person has to file an appeal to the Director of the School Education. The Directorate has now been bifurcated and separate Matriculation Directorate has been constituted. On the basis of the regulation and the service rules of the management and the terms of the agreement, the petitioner association members are awaiting from the management for implementing the VI Pay Commission. The members of the petitioner association have not been given so far Selection Grade and Special Grade. In fact, instead of giving Selection Grade and Special Grade, they were given one increment in lieu of the Selection Grade and Special Grade on completion of ten years and 20 years and not for 30 years. Even the sanction of one increment has been stopped for those who reached 10 years and 20 years. The learned Senior Counsel further submitted that the members of the petitioner association have been working in the fourth respondent school for several years with fond hope of getting good treatment and emoluments on par with that of Government staff. In view of the various denials, it resulted in getting reduced pension as well. The pension amounts are settled on the basis of Last Pay Drawn. Since they have not been given Pay Revision with effect from 1.6.2006, a number of persons who retired in the interregnum period, have been fixed lesser pension. Therefore, the learned Senior Counsel for the petitioner pray that the Writ Petition be allowed. In support of his contention, the learned Senior Counsel for the petitioner relied on the judgment of this Court in the case of V.Venkatachalapathy and four others vs. Vellore Co-operative Sugar Mills Matriculation School rep. by its President reported in 2000 (II) CTC 478.

7. On the contrary, Mr. Isaac Mohanlal, learned Senior Counsel appearing for the fourth respondent, refuting the allegations of the petitioner submitted that the fourth respondent school is a Minority Educational Institution. It is run by the Social Society of the Brothers of the Holy Cross which is a religious charitable society consisting of the Rev. Brothers of the Roman Catholic Order of Christianity. The Society is registered under the Societies Registration Act bearing Reg.No.55/79-80. The fourth respondent school is approved by the first respondent Directorate of Matriculation Schools, Chennai. According to the Code of Regulation for Matriculation Schools, the Department considers the Matriculation Schools as separate entities. They continue to be fee-based and enjoy financial autonomy. They can levy

reasonable fee commensurate with the expenditure involved and the amenities provided. The school gives a very fair salary to the staff with allowances. The teachers in Matriculation Schools do not fall equal to the teachers of Government Schools in all respects. Their nature of work, the terms of employment and the conditions of service are not on par with that of the Government staff. The staff in the fourth respondent school are paid adequate salary commensurate with their work and qualification. They are paid Dearness Allowances, Increments, House Rent Allowance, Selection Grade, Provident Fund etc.,. The employees in Matriculation Schools are normally not transferable whereas in the case of Government Schools, they are transferable. It is further submitted by the learned Senior Counsel that the employment of the teachers and other staff in the fourth respondent school is on contractual basis. The nature of employment is within the realm of contract. The school is a self-financing school. It does not receive any Government grant. The petitioner cannot legitimately invoke the extra-ordinary jurisdiction of the Hon'ble High Court in matters of this nature. The petitioner association is not recognised by the fourth respondent school. The School has never made any commitment either in the appointment order or in the promotion order that the scale of pay and other allowances for the appointees or promotes would be paid on par with the Government teachers. On completion of 10 years, one increment is given and on completion of 20 years another one increment is given and on completion of 30 years still another increment is given. Special Grade and Selection Grade are awarded for every ten years of service. For the aforesaid reasons, the Writ Petition is devoid of merits. It is an abuse of the process of Court and hence, the Writ Petition is liable to be dismissed. In support of his contention, the learned Senior Counsel for the fourth respondent relied on the judgment of the Full Bench of this Court in the case of the Correspondent/Principal, Arokiamada Matriculation Hr.Sec.School v. T.Sorubarani (deceased) (FB) reported in 2015 (6) CTC 129, and the judgment of the Hon'ble Supreme Court in the case Satimbla Sharma and others Vs. St.Paul's Senior Secondary School and others reported in (2011) 13 Supreme Court Cases 760.

8. Heard the learned Senior Counsel appearing for the petitioner and the learned Senior Counsel for the fourth respondent and Mrs.P.Rajalakshmi, learned Government Advocate for respondents 1 to 3.

9. The fourth respondent school is a Minority Institution. The School is a self-financing School. The employment of the teachers and other staff in fourth respondent school is on contractual basis. The Hon'ble Supreme Court in T.M.A.Pai Foundation and others vs. State of Karnataka and others reported 2002 (5) CTC 201 held that "so far as the statutory provisions

regulating the facets of administration are concerned, in case of an Unaided Minority Educational Institution, the regulatory measure of control should be minimal and conditions of recognition as well as the conditions of affiliation to an university or Board have to be complied with, but in the matter of day-to-day management like the appointment of Staff, Teaching and Non-Teaching and administrative control over them, the management should have the freedom and there should not be any external controlling agency. While advancing his argument, the learned Senior Counsel relied on the judgment of this Court in the case of V.Venkatachalapathy and four others vs. Vellore Co-operative Sugar Mills Matriculation School rep. by its President reported in 2000 (II) CTC 478. He draw the attention of this Court to Paragraph 20 of the said judgment, which reads as follows:-

"20. However, this Court is clear in its mind that the writ petitioners who are teachers employed in the first respondent school are entitled to pay parity and they should be paid on par with the teachers employed in the Government School as has been held by the Apex Court in Frank Anthony P.S.E.Association v. Union of India, reported in AIR 1987 SC 311 as well as State Bank of Haryana v. Rajpal reported in 1996 (5) SCC 273.

However, aggrieved against said judgment, the Vellore Co-operative Sugar Mills Matriculation School, rep. by its President, Vellore Sugar Mills, preferred Writ Appeal before a Division Bench of this Court, which was heard along with other similar matters viz., W.A.Nos.1962 of 2005, 1389 of 2000 etc., (batch case) and by common judgment dated 28.4.2008 in W.A.Nos.2424 to 2428 (batch case), the Division Bench held that the Writ Petitions and the Writ Appeals are dismissed.

10. On the contrary, the learned Senior Counsel for the fourth respondent, while advancing his argument, he draw the attention of Judgment of a Division Bench of this Court viz., The Correspondent, Rev.Fr.John Alexander, vs. J.Lourdurai (DB) reported in 2014 (2) CWC 649. In Paragraphs 17 and 18, it has been held as follows:-

"17. Further, the issue as to whether the staff members of Unaided Minority Institutions are entitled to pay scale at par with the Government employees, as provided under Clause 18(ii) of the Code, came into consideration in this Court in The Special Officer, Salem Cooperative Sugar Mills Matriculation Hr.Sec.School, Mohanur, Namakkal District v. All Teachers' Front, rep. by its General Secretary, N.Umanathan,

Coimbatore-38 and in connected matters, W.A.Nos.1962 of 2005 etc., batch. A Division Bench of this Court held that the Teaching and Non-Teaching Staff are entitled to Government pay scales. Thereagainst, a Special Leave Petition, being S.L.P. (Civil) No.26743 of 2008 was filed before the Supreme Court, wherein the Order passed by the Division Bench of this Court in W.A.No.1309 of 2000 was stayed on 17.11.2008 and the same is pending consideration.

18. For the reasons stated hereinabove, the decision of the appellant School Management to reduce the age of superannuation of its Staff members from 60 years to 58 years, cannot be faulted with. As such, the common order passed by the learned Single Judge in the Writ Petitions stands set aside."

11. In the Case of the Correspondent/Principal, Arokiyamada Matriculation Higher Secondary School vs. T.Sorubarani (deceased) (FB), a Full Bench of this Court, in Paragraph 22, it has been held as follows:-

"22. Regarding maintainability of a Writ Petition seeking pay parity, the Hon'ble Apex Court in Sushmita Basu v. Ballygunge Siksha Samity, 2006 (7) SCC 680, held in Paragraph 4 of the Judgment as under:-

" In this context, we must also notice that the Writ Petition in the High Court is filed for the issue of a Writ of Mandamus directing a Private Educational Institution to implement the recommendations of the Third Pay Commission including their implementation with retrospective effect. Even the decision relied on by the learned Counsel for the Appellants, namely K.Krishnamacharyulu & others v. Shri Venkateswara Hindu College of Engineering and another, 1997 (2) SCR 368 shows that interference under Article 226 of the Constitution of India to issue a Writ of Mandamus by the Court against a Private Educational Institution like the First Respondent herein, would be justified only if a Public Law element is involved and if it is only a Private Law remedy, no Writ Petition would lie. We think that even going by the ratio that decision, a Writ of Mandamus could not have been issued to the First Respondent in this case."

Further, in Paragraphs 27 and 28, it has been held as follows:-

"27. This Court would also like to place on record that even the Staff of the State Government are not paid Salary on par with the counterparts of the Central Government. In such situation, the State Government cannot force the Management of a Private School to pay Salary to its staff on par with the staff of the State Government, which, in the considered opinion of this Court, will indirectly forcing the Institution to surrender the fundamental right guaranteed under Article 30(1) of the Constitution of India.

28. It is settled law that Writ of Mandamus could be issued only if a Public Law element is involved. In the instant case, no Public interest is involved. In view of the clear and unambiguous lega proposition set out by the Hon'ble Supreme Court in its various decisions and the fact that the Code is only an enabling provision and not statutory, there can be no manner of doubt that the Private Institutions are at liberty to fix their own norms in administration with reasonable restrictions. As such, no direction can be issued against an Unaided Private Institution to enforce the policy of the Government in its administration."

12. In the light of the above discussion and decisions cited above, there is no merit in the Writ Petition. Hence, the Writ Petition is dismissed. No costs.

सत्यमेव जयते
-s/d-

Assistant Registrar(CSVI)

True Copy

Sub-Assistant Registrar

asvm

To

1.The Director of Matriculation School,
Chennai - 6.

2.The Chief Educational Officer,
Salem.

3.The Inspector of Matriculation Schools,
Salem.

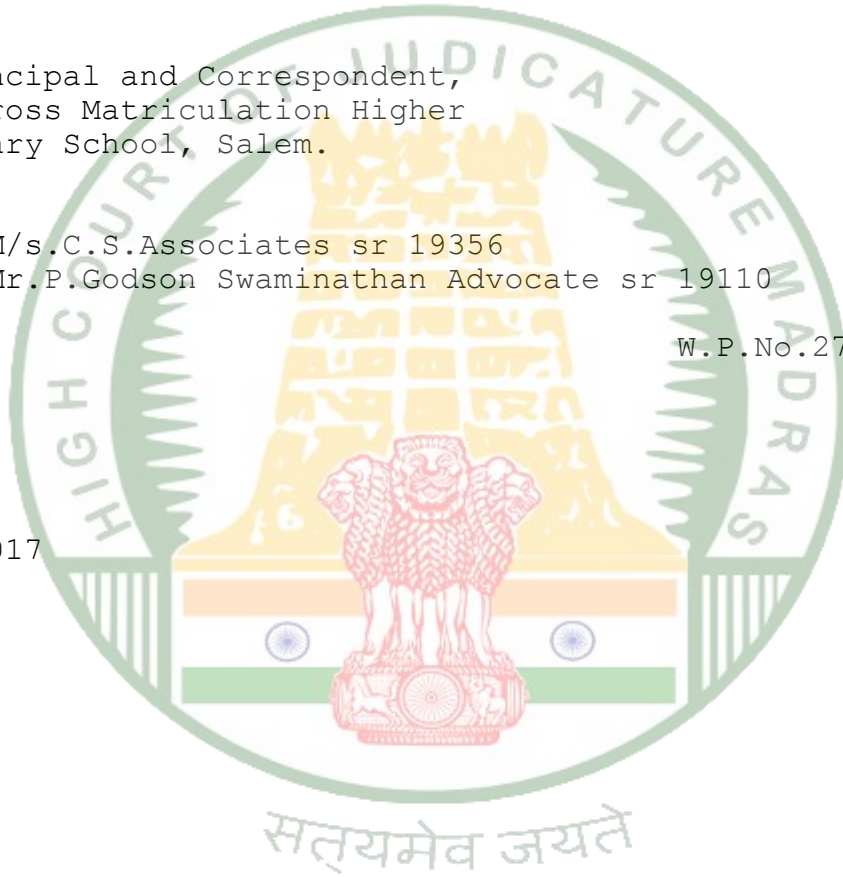
4.The Principal and Correspondent,
Holy Cross Matriculation Higher
Secondary School, Salem.

+1 cc to M/s.C.S.Associates sr 19356

+1 cc to Mr.P.Godson Swaminathan Advocate sr 19110

W.P.No.27604 of 2011

nml (co)
aa20/04/2017



WEB COPY