

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2018

CORAM

THE HONOURABLE Mr.JUSTICE R.SURESH KUMAR

W.P.No.14840 of 2002
and W.M.P.No. 19939 of 2002

S.K.Sugumaran ... Petitioner

Vs

1.The Central Board of Secondary Education,
rep. by its Secretary,
Shiksha Kendra,
#2, Community Centre,
Preet Vihar,
New Delhi 110 092.

2.The Deputy Secretary,
Central Board of Secondary Education,
#1630, A.J.Block,
Anna Nagar West (Extn)
Chennai - 600 040.

3.Rex Higher Secondary School,
rep. by its Correspondence,
Post Box No.54,
Ootacamund,
The Nilgiris - 643 001.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue Writ of MANDAMUS directing the third respondent to grant the petitioner the pay, allowance and other benefits as it is payable to the Teachers of the Schools of the Government of Tamilnadu, from the date of his appointment namely 01.07.1986, grant the consequential arrears of pay and allowances along with the interest.

For Petitioner : Mr.R.Sivakumar

For Respondents

For R1 & R2 : Mr.G.Nagarajan

For R3 : Mr.Kingston Jerold
for Mr.S.K.Raghunathan

O R D E R

The prayer sought for herein is for a Writ of Mandamus to direct the third respondent to grant the petitioner the pay, allowance and other benefits as it is payable to the teachers of the schools of the Government of Tamilnadu, from the date of his appointment namely 01.07.1986, grant the consequential arrears of pay and allowances along with the interest.

2. The necessary facts, which are required to be noticed for the disposal of this writ petition are as follows:

The third respondent is a recognized Unaided Private School duly affiliated with the first respondent namely Central Board Secondary Education (in short CBSE). In the third respondent School, the petitioner was appointed as language Teacher (Hindi Language) on 01.07.1986. His service was also regularized or confirmed by the third respondent by order dated 05.07.1988. It is the claim of the petitioner that, from the date of appointment, the petitioner had rendered unblemished service of 15 years. Though the petitioner had worked for several years in the third respondent school, the grievances of the petitioner for approaching this Court by way of this writ petition is that, even though, it was agreed upon by the third respondent school, which was reflected in the order of appointment dated 01.07.1986, the petitioner had not been paid the correct salary as has been agreed by the School Management. In this regard, the petitioner has relied upon the terms mentioned in the appointment order dated 01.07.1986, which reads thus :

"With reference to the Interview you had with us on the 26th of June, 1986, you are hereby appointed as a teacher temporarily for a period of one year with effect from 1st July, 1986. You will be paid a basic pay of Rs.610/- plus usual allowances admissible by the Tamil Nadu Government from time to time."

2.1. Therefore, in this context, by giving a calculation sheet for the difference of salary payable to the petitioner from 1988 to 2001, the petitioner claimed a sum of Rs.3,80,478/- as salary difference, which is otherwise due payable to the petitioner. Therefore, the petitioner has approached this Court with the aforesaid prayer of Mandamus seeking direction to the third respondent to pay the correct salary and allowances at par with teachers working in the State Government or Government aided Schools.

3. Mr.R.Sivakumar, learned Counsel appearing for the petitioner has submitted that, the third respondent School is affiliated to the first respondent CBSE and as per the affiliation bye-law, which came into effect from 28.01.1988, the third respondent school is bound by the various provisions of the first respondent affiliation laws. In this regard, the

learned counsel appearing for the petitioner relied upon the following bye-laws in support of the claim of the petitioner :-

"The school in India must pay salaries and admissible allowances to the staff not less than the corresponding categories of employees in the State Government schools or as per scales etc. prescribed by the Government of India. The schools outside India should pay salaries not lower than those of the teachers in government schools in that country or not less than the salaries and foreign allowances payable to KVS teachers if officially posted to that country. A certificate to this effect should be obtained from the Indian Diplomatic Mission."

3.1. The learned counsel would also submit that, if any of the provision of the bye-laws is violated by an affiliated institution of the first respondent, under Clause 17 of the bye-laws under the heading "Withdrawal of Affiliation", it is open to the first respondent to withdraw the affiliation for such kind of violation on the part of the School. In this context, it is submitted by the learned counsel appearing for the petitioner that, Clause 17 under the bye-law can very well be invoked by the first respondent, which reads thus:

"Not paying salaries and allowances to teachers and other employees, at least at par with those obtaining in State/Union Territory institutions; default or delay in payment of salaries and allowances."

3.2. The learned Counsel appearing for the petitioner by relying upon the bye-laws as referred above, as well as the term of agreement as has been reflected in the very order of appointment dated 01.07.1986, which has also been extracted above, has submitted that, though the bye-laws required that the teachers of the affiliated institutions shall be paid not less than the pay fixed by the Government to the teacher in the Government and Government Aided Institutions and as has already been agreed by the School in the appointment order itself, non-payment of the agreed salary and emoluments to the petitioner for the years together is a complete violation of the bye-laws and also against the terms and conditions of the appointment order. Therefore in this context, the petitioner is very well entitled to seek for mandamus.

3.3. In support of his contention, the learned Counsel appearing for the petitioner has relied upon the following decisions:

1. AIR 1987 SC 311 - Frank Anthony Public School Employees' Association Vs. Union of India and others.
2. 2000(4) LLN 771 - Raskar Vidya Damodar (alias) Bhujbal Vidya Vs. Maharashtra Arogyamandal and others.
3. 2000(2) SCC 42 - Chandigarh Administration and others Vs. Rajni Vali (MRS) and others

3.4. By relying upon these decisions, the learned Counsel appearing for the petitioner submitted that, in the said decisions, the law has been well settled that the teachers working in any unaided, recognized Private Schools/Educational Institutions are also entitled to seek equal salary and emoluments as that of the teachers working in the Government Schools and Government Aided Schools and Institutions. This was aimed to bring par excellence in imparting education in the private schools also, as the quality of the education shall at any cost not be compromised. Because of paying the lesser salary to the teachers and non-teaching staff of the private institution, by which, the quality of education cannot be allowed to go down.

3.5. The learned counsel appearing for the petitioner would also submit that, even though it has been agreed that, apart from basic pay of allowances, perquisites to be fixed by the State Government from time to time would be payable to the petitioner, the said agreement has been thrown out and the third respondent school, except for two years i.e., 1990 and 1991, had never paid the equal salary as that of the Government teachers or the Government aided school teachers, to the petitioner and therefore, the petitioner is very well entitled to seek the benefit of equal salary.

4. Per contra, Mr. Kingston Jarold, learned counsel appearing for the third respondent/school would submit that, first of all the affiliation bye-laws of the first respondent CBSE is only a guiding factor, and insofar as the salary and other components of the teaching and non teaching staff of an affiliated school is concerned, it has no role. In respect of the creation of infrastructure and other facilities to impart education and for getting affiliation, those conditions prescribed by the first respondent/CBSE in its bye-laws have to be fulfilled. However, it does not mean that the first respondent/CBSE can compel the affiliated institution to pay equal salary to the school teachers, on par with Government school or Government aided school.

4.1. In this context, the learned counsel appearing for the third respondent has made a submission that, it has been held by the Court of Law that, the affiliation bye-laws of the first respondent CBSE is not a law to be enforced by a Court of Law by issuing direction by way of writ of mandamus. In this context, the learned counsel would heavily rely upon the Division Bench decision of this Court made in the Management of Bakthavatchalam Vidhyashram Vs. The Workmen rep. by the President & others reported in 2014 (4) LW 187 equivalent with CDJ 2014 MHC 1467.

4.2. Apart from the merits of the case, the learned counsel appearing for the third respondent has raised preliminary objection, with regard to maintainability of the writ petition also and he has submitted that since the petitioner was admittedly working as a teacher between the years 1988-2003, he has resigned in the year 2003 and it was accepted by the School and after having receipt of all salary and emoluments, he has approached this Court by invoking Article 226 of the Constitution of India and seeking for Writ of Mandamus. He would further submit that the third respondent is not a State within the meaning of Article 12 of the Constitution for the purpose of enforcing any legal right by seeking prerogative writ under Article 226 of the Constitution of India and also the petitioner cannot have any statutory right to enforce the alleged agreement by way of prerogative right as has been sought for in this case by invoking Article 226 of the Constitution. Since it is settled proposition of law that, writ can be issued under Article 226 only against the State, public originations and public sector undertakings, such a writ jurisdiction cannot be invoked against the private institutions, which is even not at all aided and therefore the element of public duty coupled with the instrumentalities of the States for the purpose of Article 12 of the Constitution is not available in this case, especially against the third respondent and therefore, the very writ petition itself is not maintainable. Therefore, it is liable to be dismissed.

4.3. The learned counsel appearing for the third respondent, apart from the said plea of maintainability, has also submitted on merits by stating that, if at all the petitioner wants to enforce the alleged agreement between the third respondent/school and the petitioner as reflected in the order of appointment, then it can only be called as contractual obligation and such contractual obligation can be justified and enforced only by referring the matter to the Civil Court and therefore, in that context also, the petitioner is not entitled to seek for a Writ under Article 226 of the Constitution to enforce the conditions of the contract.

4.4. The learned Counsel appearing for the third respondent would also submit that, as has been admitted by the petitioner's side, at least for two years, excess salary had been paid than what has been prescribed by the Government. Therefore, it shows that the salary not only for the petitioner but also for all the teaching staff working in the School, had been fixed in commensurate with the working conditions, working hours, qualifications etc. Accordingly, all the teaching staff including the petitioner had been paid salary in commensurate with their entitlement and there had been no complaint from any part or from any teaching or non teaching staff showing the finger against the third respondent school to state that the school has paid lessor salary than the entitlement of the teachers.

4.5. The learned counsel appearing for the third respondent would also submit that, subsequent to the filing of this writ petition, there had been disciplinary proceedings initiated against the petitioner and after the domestic enquiry, when the charges were proved, the Management of the School wanted to take action against the petitioner. But the petitioner himself had come forward to give resignation voluntarily and therefore, instead of punishing the petitioner, the Management of the School had decided to accept the resignation to give quietus amicably to the relationship between the school and the teacher, as wished by the petitioner himself and accordingly the resignation of the petitioner was accepted. Therefore, the learned counsel appearing for the third respondent would submit that after having resigned the job, the petitioner has no locus standi to seek of any service benefit, as the employer-employee relationship had also been terminated by virtue of the voluntary action on the part of the petitioner.

4.6. That apart, the learned counsel appearing for the third respondent would further submit that, by relying upon the statement of difference in the pay scale, filed by the petitioner in this regard, through the typed set of papers, from time to time the salary had been revised to all the teachers including the petitioner, when he was working at the third respondent School. For instance, in the year 1996, the salary fixed for the petitioner was Rs.2,908/-, whereas the said salary had been enhanced to Rs.4,478/- in the year 1998, therefore, within two years there had been enhancement of Rs.1,570/-. Like that further years, the salary had been increased for all the teachers including the petitioner and therefore, the submission of the petitioner that he had not paid the increased salary is not correct.

4.7. Insofar as the claim of the petitioner that he should have been paid the salary and other allowances and emoluments

strictly on par with the Government teachers and Government Aided School teachers, the learned Counsel for the third respondent has relied upon some decisions of the Court of Law and argued that the teachers working in the unaided private school cannot seek equal salary as that of the Government school teachers or Government aided school teachers. In this context, the learned counsel for the third respondent has relied upon the following decisions.

1. Satimbla Sharma & Others Vs. St. Paul's Senior Secondary School and others reported in AIR (SC) 2926, 2011(13) SCC 760 and CDJ 2011 SC 758.
2. The Management of Bakthavatchalam Vidyashram Vs. The Workmen, Rep. by the President & others reported in 2014 (4) LS 187, CDJ 2014 MHC 1467.
3. The Workmen employed in Padma Seshadri Bala Bhavan Senior Secondary School, Chennai Vs. The Managment of Pada Seshadri Bala Bhavan Senior Second School and another made in W.P.No.8346 of 2005 dated 30.04.2015.

4.8. By relying upon these decisions, the learned counsel for the third respondent would submit that, there had been number of decisions to state that the teachers or non-teaching staff working in a private unaided school cannot seek any pay and emoluments as that of the Government schools teachers as well as the Government aided school teachers and non teaching staff and therefore, in view of the settled proposition of legal decisions, in this regard, as has been quoted in the above decisions, the petitioner is not entitled to seek any such relief as he sought for in this writ petition, hence this writ petition is liable to be dismissed.

5. I have also heard Mr.G.Nagarajan, learned Standing Counsel appearing for the respondents 1&2, who would submit that, the CBSE bye-laws had been brought into force from 28th January, 1988 and CBSE have extended provision in the bye-laws as to the condition to be stipulated by the CBSE on affiliated institutions, which are expected to adhere strictly. Even though some judgments have come to state that the CBSE bye-laws is not the law to enforce, still the CBSE bye-laws is the guiding factor and based on which only the institution who seeks affiliation from CBSE, can be considered and granted. The power of withdrawal of affiliation is always vested with the CBSE, in case it found that any of the provisions of the bye-laws of the CBSE is violated by the affiliated institutions. Except such stand of the CBSE, insofar as the claim made by the petitioner as against third respondent is concerned, which in fact regarding the service dispute between them, the role of the first respondent CBSE is very very limited.

6. I have considered the said rival submissions made by the learned Counsel appearing for the parties.

7. Since the objection on the maintainability of the writ petition had been raised by the third respondent to state that the third respondent is not an aided institution and therefore, it is not amenable to writ jurisdiction under Article 226 of the Constitution of India is concerned, the judgment cited by the learned counsel for the third respondent as well as the learned counsel of the petitioner can very well be pressed to resolve this issue.

8. It was submitted by the learned counsel for the third respondent by relying upon the judgment of the Hon'ble Apex Court reported in (2011) 13 SSC 760 in the matter of Satimbla Sharma & Others Vs. St. Paul's Senior Secondary School and others, cited supra, where it has been held that the unaided private educational institutions as has been held therein, can not be subjected to public law obligations of State under Article 14 and Article 39(d) of the Constitution. It is however also held in the said judgment that the claim for parity in pay, as to the teachers in the Government and Government Aided School by the teachers of unaided Private Educational Institution as a right to equality ensured in Article 14 and 39(d) of the Constitution, would be available against the State, therefore, it cannot be claimed against unaided private minority schools. The reason for such decision, according to the Hon'ble Apex Court, is that, the teachers of Government schools should be paid out of Government funds and teachers of Government aided schools are also mostly paid out of Government fund. However, the teachers of private unaided schools are paid out of fees and other resources of private schools. Therefore, in absence of any statutory provisions in favour of teachers in unaided private educational institutions, no relief can be given.

9. However, before the Hon'ble Apex Court, in the matter of Dr. Janet Jayapaul Vs. S.R.M. University & Others reported in 2016(1) LW 865 equivalent to 2016 AIR (SC) 73 equivalent to CDJ 2015 SC 970, the issue posed for consideration was that, whether the writ petition would lie against private Deemed University. After having analysed the issue in detail, the Hon'ble Apex Court has held that, private Deemed University also can be subjected to the writ jurisdiction under Article 226 of the Constitution. Relevant portion of the said judgment reads thus :-

"20. It is clear from reading of the ratio decidendi of judgment in Zee Telefilms Ltd. (supra) that firstly, it is held therein that the BCCI discharges public duties and secondly, an aggrieved party can, for this reason, seek a

public law remedy against the BCCI under Article 226 of the Constitution of India.

21. Applying the aforesaid principle of law to the facts of the case in hand, we are of the considered view that the Division Bench of the High Court erred in holding that respondent No. 1 is not subjected to the writ jurisdiction of the High Court under Article 226 of the Constitution. In other words, it should have been held that respondent No.1 is subjected to the writ jurisdiction of the High Court under Article 226 of the Constitution.

22. This we say for the reasons that firstly, respondent No. 1 is engaged in imparting education in higher studies to students at large. Secondly, it is discharging "public function" by way of imparting education. Thirdly, it is notified as a "Deemed University" by the Central Government under Section 3 of the UGC Act. Fourthly, being a "Deemed University", all the provisions of the UGC Act are made applicable to respondent No. 1, which inter alia provides for effective discharge of the public function - namely education for the benefit of public. Fifthly, once respondent No. 1 is declared as "Deemed University" whose all functions and activities are governed by the UGC Act, alike other universities then it is an "authority" within the meaning of Article 12 of the Constitution. Lastly, once it is held to be an "authority" as provided in Article 12 then as a necessary consequence, it becomes amenable to writ jurisdiction of High Court under Article 226 of the Constitution.

23. In the light of foregoing discussion, we cannot concur with the finding rendered by the Division Bench and accordingly while reversing the finding we hold that the appellant's writ petition under Article 226 of the Constitution against respondent No. 1 is maintainable."

10. In view of the aforesaid judgment of Hon'ble Apex Court in SRM University case, where the specific question was answered that against the private Deemed University also, writ petition can be maintained, as the private institution, since involving in public duty, it can very well be represented or proceeded

under the purview of the writ jurisdiction. In view of the settled legal position, since the third respondent institution is doing the public duty of imparting education, though it was managed by the private persons, it is the public institution for the purpose of bringing to the writ jurisdiction of this Court and it can also be presumed as an extended instrumentality of the State, being a public institution for the purpose of Article 12 of the constitution. Therefore, the said objection raised by the third respondent with regard to the maintainability of the writ petition before this Court is liable to be rejected and accordingly is rejected.

11. The learned counsel appearing for the third respondent has raised the second issue that, assuming that the petitioner can seek for some relief on the basis of the agreed terms between the school and the petitioner, which according to the petitioner flow from the contents of the appointment order itself, even then, the petitioner can approach only the Civil Court to enforce the terms of the contract between the school and the petitioner. Insofar as the said submission is concerned, this Court is not impressed with the same. The reason being that, once the third respondent is a public institution doing public duty and the paying of salary and emoluments is attached with service conditions of the teaching and non-teaching staff, in order to redress grievances of the teaching staff, since no other remedy is available as has been provided under Tamil Nadu Private School Regulation Act, insofar as the aided institutions are concerned, such aggrieved teachers and non-teaching staff to redress their grievances can very well approach this Court by invoking Article 226 of the Constitution. Therefore, in that context, the Civil Court remedy, as has been suggested by the learned counsel appearing for the third respondent cannot be a suitable alternative remedy and therefore such contention of the third respondent through his counsel is liable to be rejected, accordingly is rejected.

12. Now turning to the merits of the claim of the petitioner is concerned, the petitioner mainly relied upon the terms fixed by the school in the very appointment order itself, which has already been extracted herein above. It shows unambiguously that the petitioner would be paid the basic salary plus usual allowances admissible by the Tamilnadu Government from time to time. The usual allowances which includes Dearness allowances, HRA, Travel allowances etc. In this context, plus basic pay, the additional components of salary would be Dearness Allowance, which would be revised from time to time by the State Government for its employees including the teachers. What has been revised for the Government school teachers would also be equally applicable to the Government aided school teachers. At the same time, whether the teachers of private unaided school would also

be equally entitled to claim the very same or exact salary and emoluments, equal to the Government teachers or Government aided School teachers is an yet another question.

13. In order to dwell the said issue, the Division Bench judgment, as has been relied upon by the learned Counsel for the third respondent, reported in 2014 (4) LW 187, in the matter of The Management of Bakthavatchalam Vidyashram Vs. The Workmen, rep by the President & others case can very well be pressed into service. In that case, the non teaching staff of an unaided private school sought for service benefits. While referring the matter by raising an industrial dispute to the Labour Court concerned, the Labour Court passed an award in favour of the non teaching staff. As against which, when the school filed a writ petition before this Court, learned Judge had dismissed the writ petition by confirming the award passed by the Labour Court. As against the order passed by the Writ Court as well as the Labour Court, an intra Court appeal was filed in W.A.No. 1705 of 2013, and it was decided by the Division Bench of this Court, where they have considered this aspect in detail and held as follows:-

"7. We have considered the rival submissions made by the respective counsels in the light of the provisions of Affiliation Bye-laws of CBSE, Tamil Nadu Schools (Regulation of Collection of Fees) Act, 2009 and Right of Children to Free and Compulsory Education Act, 2009.

8. It is not in dispute that the Transport wing of the appellant School is not functioning from 2001 and it is not a pre-requisite for getting affiliation of a school under CBSE pattern to provide transport facility. The appointment of Ayahs and Sweepers are necessary for the establishment of an educational institution. Admittedly the appellant school is functioning out of the fee collected from the students, as it is an unaided management. The Tamil Nadu Schools (Regulation of Collection of Fees) Act, 2009 mandates managements of all private unaided schools, including CBSE Schools to go before the Committee called Private Schools Fee Determination Committee, and the appellant management also submitted its details regarding expenses to be incurred per year for running the institution and the salary payable to the staff, both teaching and non-teaching, based on which the Private Schools Fee Determination Committee on 10.6.2013 fixed fee for each standard from LKG to 12th Standard and the fee fixed once will be in force for three years. The said Act prohibits

collection of any other amount from any student and if collection of any other amount is noticed, penal consequences will follow.

9. The Right of Children to Free and Compulsory Education Act, 2009, Section 23 and Section 2(a) define "appropriate Government" as "State Government". In exercise of that power the State Government fixed salary to the staff members bearing in mind the Minimum Wages Act, 1948 and for the schools located within the Municipal Corporation limits, classified as "A" zone, salary of Rs.4,500/- per month is fixed for Office Assistant/Gardener/Ayahs/Watchmen, and Rs.4,414/- per month is fixed for scavengers. Thus, the State Government in exercise of the power vested under the Right of Children to Free and Compulsory Education Act, 2009 and the Rules framed thereunder has already fixed the salary to Sweepers and Ayahs.

10. The Hon'ble Supreme Court in the decision reported in (2011) 8 MLJ 554 (SC) (Satimbla Sharma v. St.Paul's Senior Secondary School) held that teachers of Private Unaided Schools have no right to claim salary equal to that of their counterpart working in Government Schools and Government Aided Schools, and the reliance placed claiming equivalent salary under Clause 5(b) of the Council for Indian School Certificate Examinations stating that salary, allowances and other benefits of the staff of the affiliated school must be comparable to that prescribed by the State Department of Education as the said condition for provisional affiliation are not statutory and are not enforceable.

11. Here in this case the respondent has relied on the CBSE Affiliation Bye-laws for claiming equivalent salary to that of Government School staff. CBSE Bye-laws having no statutory force, cannot be the sole basis to claim salary of Drivers, Conductors and Ayahs on par with the Government School staff. The Judgment of the Supreme Court cited supra is applicable to this case with all vigor.

12. Similar relief prayed by Padma Seshadri Bala Bhavan Senior Secondary School Teachers and Staff Welfare Association relying upon the circular issued by CBSE dated 27.7.2005, seeking salary and other benefits under VI Pay Commission

from 1.1.1996, was considered by one of us (NPV.,J.) in W.P.Nos.1567 and 1588 of 2007 and the said prayer was negatived by order dated 11.2.2008 by stating that the CBSE Affiliation Bye-laws issued with effect from 28.1.1988 have no statutory force and based on the said circular claim of salary on par with the Government School staff cannot be ordered. In the said order the judgments of the Honourable Supreme Court reported in (1972) 1 SCC 492 (State of Tamil Nadu v. S.K.Krishnamurthi), (2002) 10 SCC 78 (State of Haryana v. Champa Devi) and (2006) 7 SCC 680 (Sushmita Basu v. Ballygunge Siksha Samity) were followed. Thus, the issue regarding claim of salary by unaided school staff on par with the Government School/Aided School staff is no longer res integra.

13. The Industrial Tribunal has not considered the issue in proper perspective and passed the award dated 19.5.2004, which was also confirmed by the learned single Judge. We are unable to endorse the views of the Industrial Tribunal and the learned single Judge.

14. The Government of Tamil Nadu having fixed minimum wages payable to the unaided school staff, if anyone of the member of the respondent association is paid less salary than the one fixed as per G.O.(2D)No.2 Labour and Employment (J1) Department, dated 27.1.2014, the appellant is bound to pay the minimum wages as prescribed therein. If any member of the association is receiving more wages/salary than the one fixed by the Government, the same shall not be reduced by the appellant management on the basis of this order.

15. In fine, the award of the Industrial Tribunal made in I.D.No.113 of 2000 dated 19.5.2004 confirmed by the order of the learned single Judge in W.P.No.34471 of 2004 dated 5.3.2013, are set aside. The writ appeal is allowed with the above observations. No costs. Connected miscellaneous petition is closed. "

14. The Division Bench therefore has held that in view of the Tamil Nadu Schools (Regulation of Collection of Fees) Act, 2009 enables the fees to be fixed for the private institutions, since the private institutions are under the regime of the Fee Fixation Committee constituted under the said Act, the Committee

fixed the fees to be collected from the students. Such fees to be fixed by the Committee is based on all the expenses incurred by the private institution. Once the fee is fixed by the Committee, the same cannot be revised or enhanced for the next three years and what is the salary fixed by the School as approved by the Fees Committee alone the expected salary for the teachers for the block year of three years and once the block year is completed, the next revision would come, for which, the expenditure components including salary to be payable to the teachers and non teaching staff would be projected before the Fees Committee. Once the Fees Committee approved the same, that shall be the revised salary for the teaching and non teaching staff of that school for the next three years. This is the system now prevailing upon insofar as the salary of the teaching and non-teaching staff of the unaided private schools are concerned because of the implementation of the Provisions of the School Fee Act.

15. However, insofar as the present case is concerned, the salary claimed by the petitioner is for the period between 1988 and 2001. This period is not covered by any Fees Determination Committee, as the said Act of Fee Determination had come only subsequently. Therefore, the reasoning given by the Division Bench in the aforesaid judgment for reaching its conclusion may not be fully available in the present case, as the said Act of Fee Determination is not concerning with the present issue.

16. Even though the said Division Bench judgment has subsequently been followed by the learned Judge of this Court in the matter of The Workmen employed in Padma Seshadri Bala Bhavan Senior Secondary School, Chennai Vs. The Management of Seshadri Bala Bhavan Senior Secondary School and others in W.P.No.8346 of 2015 dated 30.04.2015, as referred to above, the learned Judge in the said order has stated that, though the issue arising out of the Division Bench Judgment in Bakthavatchalam Vidyashram case had been appealed to the Hon'ble Apex Court, the issue is still pending and yet to be decided and therefore till the decision comes from the Hon'ble Apex Court, the judgment of the Division Bench can be followed.

17. On the other hand, the judgment relied by the learned counsel for the petitioner can also be taken note of. In the earliest judgment referred to by him reported in AIR 1987 SC 311 in Frank Anthony Public School Employees' Association Vs. Union of India and others case, the Hon'ble Apex Court by relying upon the provision of the Delhi School Education Act has held that, the employees of recognized private school shall not be inferior than the employees of schools run by appropriate Authority, because it was aimed at safeguarding excellence of institution.

18. In a Division Bench Judgment of Bombay High Court reported in 2000(4) LLN 771 in the matter of Raskar Vidya Damodar @ Smt.Bhujbal Vidya Vs. Maharashtra Arogyamandal & others cited supra, the learned counsel for the petitioner has relied upon the following passage :-

"8. It is a well settled position in law by now that there has to be a parity of pay scales, between the teachers of private schools which are aided as well as unaided. Similarly, there has to be a parity of pay scales between the teachers in private aided schools and schools run by the State Government or by the local authorities like the Zilla Parishads and Municipalities. It is not permissible in law for a private unaided educational institution to put forward the hypotheses that it is not liable to pay salaries to its teachers as per the pay scales prescribed under the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 and which are being made applicable to the teachers in aided private schools. This position in law has been well settled by a Judgment of the Supreme Court in the case of K. Krishnamacharyulu and others v. Sri Venkateswara Hindu College of Engineering and another, 1997(I) C.L.R. 1133. We may also in this regard refer to another Judgment of the Supreme Court in the case of Chandigarh Administration and others v. Rajani Vali and others, . In the said case the teacher came to be employed in a private school which was recognized and receiving grant-in-aid. However, it was contended that she was employed to teach the XI and XII Standards, which were unaided, though these classes were opened after the competent authority having granted permission....."

19. Similarly, the learned Counsel appearing for the petitioner has also relied upon the judgment of the Hon'ble Apex Court reported in 2000 (2) SSC 42 in the matter of Chandigarh Administration and others Vs. Ranjni Vali and others, whereas he relied the following passage of the said judgment:-

"9. Tested on the touch stone of the principles laid down in the aforementioned decisions, the position is manifest that there is no justification for denying the claim of the respondents for parity of pay scale and to accept the contention of the appellants will amount to

confirming the discriminatory treatment against the respondents. Therefore, the High Court rightly rejected the case of the appellants. The directions issued in the impugned Judgment to pay the respondents 1 to 12 the same salary as is being paid to their- counter parts in the privately managed Government aided schools in Chandigarh in the circumstances is unassailable."

20. On perusal of all these decisions cited by both sides, the following principles broadly emerged :-

(i) The private recognized academic institutions are amenable to the writ jurisdiction under Article 226 of the Constitution of India.

(ii) The service disputes of teaching and non teaching staff of such unaided recognized private academic institutions can very well be agitated by invoking Article 226 of the Constitution, for which they need not be tried by the Civil Court, in case if there is no other alternative efficacious statutory remedy.

(iii) Even though in order to maintain par excellence in imparting education, the teaching staff of the private unaided institution are also to be considered equally on par with the teachers of the Government and Government aided institutions, but at the same time, the exact salary and perquisites as has been fixed by the Government from time to time for the Government and Government aided School teachers, cannot be expected to be paid to the teachers working in the private unaided educational institutions, for the reason that, the private educational institution's management run the institution mainly out of the sources of fees being collected from the students periodically, which in fact, controlled by the State and by the Instrumentalities of the State including the statutory authorities like Fees Determination Committee, insofar as the State of Tamil Nadu is concerned by virtue of the legislation in this regard. However, the teaching staff of the private unaided educational institutions shall not be under paid, since they are qualified to hold the post of teachers on par with the teachers working in the Government and Government aided institutions.

21. The aforesaid principles have been emerged from the various decisions as referred to above from the Law Courts. As far as the facts of the present case, this Court is of the considered view that, even though the petitioner herein is not entitled to seek exact salary/ remuneration and perquisites strictly on par with the Government or Government aided school teachers, he can claim respectable salary that periodically

increased and enhanced, which is otherwise agreed by the School, as has been reflected in the order of appointment itself.

22. Since, the period for enhanced salary claimed by the petitioner is between 1988 and 2001 and during that period, the salary payable to the teachers has not been approved by any Fee Committee constituted in this regard, as the same is subsequent development by virtue of the legislation in this regard, such salary payable to the teachers shall not be treated as unquestionable by any authority. Because, if no one is available to question, the salary itself is considered to be under payment, that will have a straight impact on imparting of education itself. Therefore, the teachers are entitled to expect a decent salary, if not, the exact salary on par with the Government School teachers and other aided school teachers.

23. In view of the aforesaid position and in order to meet the ends of justice, this Court is inclined to pass the following order for disposal of this writ petition :-

There shall be a direction to both the petitioner as well as the third respondent to refer the matter of enhancement of salary as claimed by the petitioner, to the Sole Arbitrator, who shall be agreed by both the third respondent and the petitioner before whom, the issue raised herein shall be referred to with the following definite terms of reference:

-

(i) as to what shall be the definite salary with periodical revision, payable to the petitioner during the period between 1988 and 2001. Once such reference is made to the Sole Arbitrator to be appointed in this regard, by mutual consent, the Sole Arbitrator shall decide the same after affording due opportunity to both the petitioner as well as the third respondent within a period of three months from the date of such reference.

(ii) Once the Sole Arbitrator decided the quantum of salary with periodical revision or enhanced salary, not necessarily on par with the exact salary of the Government and Government Aided school teachers, such fixation made by the Sole Arbitrator shall be accepted by both the parties, as it would bind both of them and that it shall be implemented by the third respondent within a period of two months thereafter.

24. With these directions, the writ petition is ordered accordingly. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary,
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2.The Deputy Secretary,
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3.The Correspondence,
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W.P.No.14840 of 2002 and
W.M.P.No. 19939 of 2002

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srg 03/02/2020