

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2018

C O R A M

THE HON'BLE MR.JUSTICE K.KALYANASUNDARAM

W.P.No.4267 of 2011

K.Thirumalaisamy

...

Petitioner

Vs

1. The Director of School Education
-cum-Chairman of the Board of Matriculation Schools,
Chennai.
2. The Inspector of Matriculation Schools,
Marketing Committee Buildings,
Ramanathapuram, Coimbatore.
3. The Correspondent,
Viswadeepthi Matriculation Higher Secondary School,
Pollachi, Coimbatore District. Respondents

Prayer: Petition filed under article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents to revise the scale of pay of the petitioner on par with the teachers of the Government School as fixed by the 6th Pay Commission recommendation and pay the salary with arrears.

For Petitioner : Ms.P.T.Ramadevi

For Respondents : Mr.P.Raja, G.A., for RR1 & 2
Ms.A.Arul Mary, for R3

O R D E R

Heard the learned counsel for the petitioner, the learned Government Advocate for the respondents 1 and 2 and the learned counsel for the third respondent and perused the materials available on record.

2. The prayer in the Writ Petition is for issuance of a Writ of Mandamus, directing the respondents to revise the scale of pay of the petitioner on par with the teachers of the Government School as fixed by the Sixth Pay Commission recommendation and pay the salary with arrears.

3. According to the petitioner, he was appointed as a Secondary Grade Teacher in the third respondent School on consolidated pay in the year 1993 and his service was regularised with effect from 01.06.1994 on a time scale of pay. It is the further case of the petitioner that he subsequently passed M.A. in Tamil and obtained M.Phil. Degree and also M.Ed. Degree and he is fully qualified to be appointed as B.T. Assistant. However, he was paid a meager salary of Rs.12,189/-.

4. It is further stated that the teachers similarly placed like that of the petitioner, had filed a Writ Petition in W.P.No.3059 of 1999, seeking pay parity, on par with the Government Teachers and the same was allowed. The appeal preferred by the Management in W.A.No.4055 of 2003 was dismissed. Hence, he is also entitled for pay parity.

5. The learned Government Advocate for the respondents 1 & 2 would argue that the issue involved in this Writ Petition was already decided by a Full Bench of this Court in a decision reported in 2015 (8) MLJ 257 (Correspondent/Principal, Arokiamada Matriculation Higher Secondary School, Pollachi vs. T.Sorubarani(deceased) and others) and hence the prayer sought for in the Writ Petition cannot be granted. The relevant portion of the said judgment is as follows:

"26.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. In order to avoid prolixity, we have not reiterated the arguments and considerations which have already been raised before the earlier Division Benches. Also, since the learned single Judge has gone into the judgments of the Hon'ble Supreme Court in detail, we have not repeated the observations here again.

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 their 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 legal 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. "

6. In the case on hand, it is not in dispute that the third respondent is an unaided Minority Institution and the petitioner has been working there since 1997. In the light of the decision of the Full Bench referred supra, the petitioner is not entitled for the prayer sought for in the Writ Petition. Hence, the Writ Petition fails and the same is dismissed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

pvs

To

1. The Director of School Education
-cum-Chairman of the Board of Matriculation Schools,
Chennai.
2. The Inspector of Matriculation Schools,
Marketing Committee Buildings,
Ramanathapuram, Coimbatore.

+1cc to Ms.P.T.Ramadevi, Advocate, S.R.No.70370
+1cc to M/S.Father Xavier Associates, S.R.No.70038
+1cc to the Government Pleader, S.R.No.70124

W.P.No.4267 of 2011

AK(CO)
CS/01/11/2018

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