

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on -11.08.2017

Pronounced on 07.06.2018

DATED : 07.06.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

W.P.Nos.8363 to 8368 of 2004

V.KANNADASAN PETITIONER in WP No.8363 of 2004
TMT.K.THIRUNAVUKKARASI PETITIONER in WP No.8364 of 2004
K.MURUGAN PETITIONER in WP No.8365 of 2004
K.ARUMUGAM PETITIONER in WP No.8366 of 2004
TMT.S.SIVAKAMI PETITIONER in WP No.8367 of 2004
K.JAYAMANI PETITIONER in WP No.8368 of 2004

-VS-

- 1 DIRECTOR OF MATRICULATION ... RESPONDENTS in all the
SCHOOLS, CHENNAI-6 petitions)
- 2 SPECIAL OFFICER AND PRESIDENT
SALEM CO-OPERATIVE SUGAR MILLS
MATRICULATION HIGHER
SECONDARY SCHOOL, MOHANUR,
NAMAKKAL DISTRICT.
- 3 STATE OF TAMIL NADU
REP.BY ITS SECRETARY TO GOVERNMENT
SCHOOL EDUCATION DEPARTMENT
SECRETARIAT CHENNAI-9

Prayer:

Petition under Article 226 of the Constitution of India seeking for the issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the (i)2nd respondent in his proceedings Rc.No.1/2003/Corr/School dated 3.2.2004, confirming his order in Rc.No.1/2003/Corr/School, dated 18.01.2004 (W.P.No.8363/2004);

(ii) 2nd respondent in his proceedings Rc.No.1/2003/Corr/School dated 11.2.2004, confirming his order in Rc.No.1/2003/Corr/School, dated 18.01.2004 (W.P.No.8364/2004);
(iii) 2nd respondent in his proceedings Rc.No.1/2003/Corr/School, dated 18.01.2004 (W.P.No.8365/2004);
(iv) 2nd respondent in his proceedings Rc.No.1/2003/Corr/School, dated 18.01.2004 (W.P.No.8366/2004);
(v) 2nd respondent in his proceedings Rc.No.1/2003/Corr/School, dated 18.01.2004 (W.P.No.8367/2004);
(vi) 2nd respondent in his proceedings Rc.No.1/2003/Corr/School dated 11.2.2004, confirming his order in Rc.No.1/2003/Corr/School, dated 3.02.2004 (W.P.No.8368/2004) respectively
quash the same, and direct the Respondents to confer all the consequential benefits.

(In all W.P.s)
For Petitioners : Mr.P.Ganesan
for M/s.S.Mani
For Respondents : Mrs.M.E.Raniselvam
Addl. Government Pleader
for respondents 1 and 3
Mrs.G.Thilakavathi (for
R2)
Senior Counsel
for Mr.R.Gopinath

COMMON ORDER

In this batch of writ petitions, the petitioners are challenging the proceedings of the second respondent in and by which the second respondent confirmed his earlier proceedings to initiate retrenchment by issuance of a retrenchment notice, and are seeking a direction on the respondents to confer all consequential benefits.

2. For the sake of convenience, the writ petition in W.P.No.8363 of 2004 is taken as a lead case and the facts of this case are alone narrated, as the other cases are admittedly alike.

3. The Salem Co-operative Sugar Mill, with a view to help the children of the members of the Co-operative Sugar Mill and the agriculturists, started a Matriculation School in the year 1978. It is stated that the school strength is around 829 and the said school had been recognized by the first respondent.

4. Pursuant to the calling of list of names by the second respondent school, the employment exchange sponsored the name of the petitioner. The petitioner participated in an interview and was thereafter selected and appointed to the post of Peon. The petitioner joined duty on 14.03.1985 and his probation was also declared. Thereafter, he was promoted as Lab Attender on 06.01.1994. According to the petitioner, he had put in 19 years of service as on the date of filing of the writ petition.

5. As the second respondent school was not paying revised scale of pay, though the school is recognized by the first respondent, all the petitioners made representation to the second respondent to pay scale of pay as per norms. As the said representation did not evoke any response, the petitioner and all other similarly placed persons, through their Association, filed W.P.No.17285 of 1999, wherein this Court, by order dated 05.02.2002, directed the petitioner association to submit a fresh representation and directed the second respondent to consider the same and pass orders in accordance with law.

6. Consequent to the said direction of this Court, the association made a representation on 28.03.2002 requesting the second respondent to pay salary and other allowances, annual increments, incentive increments, Selection Grade/Special Grade on a par with that of the Teachers working in the Government School. However, the second respondent, by order dated 21.05.2002, rejected the request made by the association stating that the Sugar Mill is in the red.

7. Assailing the said order dated 21.05.2002, the association filed W.P.No.37163 of 2002, wherein this Court, by order dated 29.11.2002, directed the first respondent to hold enquiry into the grievances of the members of the association for non-implementation of the uniform scale of pay on a par with teaching and non-teaching staff of the Government school.

8. It is stated that thereafter the first respondent conducted an enquiry and passed an order on 12.02.2003 directing the second respondent to pay the scale of pay on a par with that of the government servants with attendant benefits to the teaching and non-teaching staff and all other benefits. It is averred that despite such order passed by the first respondent, the second respondent did not take any steps to implement the same, which forced the Teachers' Association to send a legal notice on 06.09.2003.

9. However, as the said legal notice also did not evoke any response, the Association filed W.P.No.32710 of 2003 to direct the second respondent to implement the order dated 12.02.2003 passed by the first respondent. In the said writ

petition, this Court, by order dated 19.11.2003, directed the second respondent to implement the order of the first respondent dated 12.02.2003, unless the first respondent is legally disabled from doing so. The second respondent was directed to carry out the said exercise on or before 22.12.2003.

10. It is further stated that, when things stood thus, one of the teachers working in the second respondent school filed W.P.No.37468 of 2003 to mandamus the respondents to refix the cadre strength of the teaching and non-teaching staff in the second respondent school as per the norms prescribed in G.O.Ms.No.525, Education Department, dated 29.12.1997. It is stated that in the said writ petition, this Court had directed the second respondent to consider the representation of the said teacher and pass orders in terms of G.O.Ms.No.525, supra.

11. It is say of the petitioner that the second respondent passed proceedings dated 17.01.2004 stating that the scale of pay is being fixed from 01.01.1996 and that the monetary benefit will be given only from 12.02.2003. Thereupon, the second respondent passed the impugned order dated 18.01.2004, a notice of retrenchment, stating that the petitioners had been found surplus due to the fall in strength of the students, thereby giving three months notice.

12. The petitioner immediately thereafter sent a representation to the second respondent on 20.01.2004 seeking to consider the fact that there is only one Lab Attender and there is no surplus staff as claimed by the second respondent. However, the second respondent passed the proceedings dated 03.02.2004 confirming the earlier order dated 18.01.2004.

13. Qua the other writ petitions being dealt with under this order, the facts are identical, but for few changes anent the cadre, the date of representation and the date of impugned order.

14. Assailing the said orders passed by the second respondent, the petitioners have filed these writ petitions for the relief stated supra.

15. The learned counsel appearing on behalf of the petitioners submitted that there is no fall in the staff strength of the second respondent school and that the impugned orders had been passed only because the petitioners approached the Court seeking pay parity with the teaching and non-teaching staff of government schools.

16. It is further contended that the petitioners had rendered unblemished services for over 15 years, on an average,

and retrenching their services at this juncture, would put them to irreparable loss and financial hardship and it is very difficult for them to get employment elsewhere.

17.Per contra, the learned Senior Counsel appearing on behalf of the second respondent School contended that no writ will lie against the second respondent, which is a co-operative society. She added that the petitioners without exhausting the alternative remedy available to them have directly filed these writ petitions and, therefore, the writ petitions are liable to be dismissed in limine.

18.She further contended that the impugned notice of retrenchment has been passed in exercise of the power conferred under the Code of Regulation for Matriculation Schools and that such retrenchment had been ordered only in the context of revision of staff strength, which is well within the administrative powers of the management of the second respondent school in terms of the Code of Regulation for Matriculation Schools and, therefore, the same does not warrant any interference of this Court.

19.I heard Mr.P.Ganesan for M/s.S.Mani, learned counsel for the petitioners, Mrs.M.E.Raniselvam, learned Additional Government Pleader for the respondents 1 and 3 and Mrs.G.Thilakavathi, learned Senior Counsel for Mr.R.Gopinath, learned counsel for the 2nd respondent and perused the documents available on record.

20.First off, it is to be noted that this Court, at the time of admission of the writ petitions, by order dated 31.03.2004, passed an order of interim stay. While in the case of the petitioner in W.P.M.P.No.9830 of 2004, the stay was made absolute, in respect of other writ petitioners, the stay granted was vacated by order dated 06.07.2004.

21.As the matter is pending for over 13 years, this Court is of the view that at this stage considering the plea of maintainability of these writ petitions is unwanted.

22.In the case on hand, it is not in dispute that the second respondent school is a recognized school and it has been admittedly recognised by the first respondent. All the writ petitioners had been admittedly appointed pursuant to their names being sponsored by the employment exchange, followed by interview, selection and thereafter appointment. It is also not the case of the second respondent that the petitioners had disqualified themselves from continuing in service.

23.It is the specific pleading of the petitioners, which

is not rebutted by the respondents, that pursuant to the order passed by this Court on 29.11.2002 in W.P.No.37163 of 2002, the first respondent conducted an enquiry and by order dated 12.02.2003 directed the second respondent to pay the scale of pay on a par with that of the government servants with attendant benefits to the teaching and non-teaching staff as requested by the members of the Association and to pay VI Pay Commission Scale of pay and to award Selection Grade on completion of ten years of service to the teaching and non-teaching staff of the second respondent school.

24.Nothing has been placed on record to show that the said order passed by the first respondent has been challenged by the second respondent and/or has been modified or set aside in the manner known to law. It only shows that the said order had attained finality.

25.That apart, when the relief granted to All Teachers Front was challenged by the second respondent School, a Division Bench of this Court in the Special Officer, Salem Co-operative Sugar Mills, Matriculation Higher Secondary School Vs. All Teachers Front, rep. by its General Secretary, N. Umathan, The Director of Matriculation Schools and The Inspector of Matriculation Schools, reported in MANU/TN/1988/2008 held as under:

"24. The standard expected of a person intending to serve as a teacher could be achieved only when they are placed equally with the same class of people in Government institutions. Their rights are well insulated by the protective cover of Rules contained in Code of Regulation for Matriculation Schools, which cannot be chiseled out by the plea that the school managements derive pitiable proceeds. When such rights are absolute in character, there could be no stumbling-block for the Government to issue executive fiat, regulating their pay as found in the said Code of Regulations.

25. Indisputably, a school or a college is personified through its teachers who put together play vital role and make focal point on which outsiders look at it. The teachers are the hub on which all the spokes of the school are set around whom they rotate to generate good result. While ill-paid teachers may not strictly be stated to be a cause for dropping grade of institution, well paid teachers would prove and could definitely claim that improvement in standard of education was by their leaps and bounds. The functional efficacy of a school very much depends upon the efficient

and dedication of well placed teachers. The pictograph of a school can very well be ascertained by the productive teachers working therein. Degradation of creativity in the teachers could not be tolerated, since they are affiliated with the responsibility of producing good students. The Courts cannot also be oblivious of this circumstance. The principles formulated by this Court are vigorously expressive.

26. The issue has been set at rest by the Supreme Court. The law in this behalf is explicit. In view of this, it is futile to contend that the Writ Petitioners could not invoke the principles of equal pay for equal work in the peculiar circumstances of these matters and there could be no comparison about the private unaided schools and the teachers serving in the Government Schools. This notion is conceptually misconceived. It is to be borne in mind that while getting recognition from the Government for upgrading the school, the Matriculation School authorities had thrown out the undertaking to the Government to abide by the guidelines formulated by the Government in the matter of payment of scales of their staff equal to those of the Government Staff.

27. In (1996) 5 SCC 273, State of Haryana and Ors. v. Rajpal Sharma and Ors., the Supreme Court has referred to a Larger Bench decision of the Court and while clarifying the position, it was held that, the observations leave no doubt or scope for the Court and has directed that the teachers of the aided schools be paid the same scales of pay and dearness allowance as teachers in the Government Schools get and that the said payment must be made for the entire period claimed by the Appellants and the Petitioners in those cases.

28. As per the consistent view taken by the Supreme Court and in the backdrop of the legal positions laid down, which have been illuminated in its decisions, it must be held that the Matriculation School teachers are entitled to get equal pay on par with the teachers who are working in the Government Schools. This view is judicially settled conviction. The legally assertive expressions could never be ignored. As far as W.P. No. 764 of 2001 is concerned, the non-teaching staff in the third Respondent educational institutions are also

entitled to get equal pay on par with their counterparts serving in the Government Schools. Therefore, the views expressed by the learned Judges in their respective orders deserve to be confirmed.

29. Writ Appeal No. 1309 of 2000 has arisen from the order passed in Writ Petition No. 3373 of 1993. The request of the Writ Petitioner, namely, Mrs. Hilda Anbiah is two folded. One is to appoint her as the Principal of the third Respondent school, namely, Noyes Matriculation Higher Secondary School, Madurai and the other relief sought for is to pay her the dearness allowance, advance incentive increment and other benefits on par with the Government employees in accordance with Chapter V, Article 16 and Chapter VI, Article 18 of the Code of Regulation of Matriculation Schools in Tamil Nadu together with arrears.

30. It is her contention that even though she was qualified as per the Regulations of the School, she was ignored and another teacher Mrs. K. Rajamanickam was promoted to the post of Principal, violating the procedure.

31. After discussing the contentions of both sides, the learned single Judge has turned down the request of the Petitioner as far as the direction for appointment is concerned, but allowed the Writ Petition as regards the payment of salary to her on par with the Government school teachers. The learned single Judge in order to arrive at the conclusion with regard to the appointment of Petitioner as the Principal in the school, has taken into consideration, the competency of the minority school to appoint any person chosen by it.

32. The learned single Judge has relied upon various decisions of the Supreme Court. In our considered view, the decision arrived at by the learned single Judge is quite appropriate. With reference to the grant of relief, as to her appointment as Principal, the Writ Petitioner has not preferred any appeal. Regarding the relief for direction to payment of salary to her on par with the Government school teacher, the school management has preferred Writ Appeal No. 1309 of 2000. The observations which we have furnished supra are squarely applicable to the contention of the writ Petitioner.

33. Writ Petition No. 10008 of 2004: The Writ Petitioner is the Special Officer/President of Salem Co-operative Sugar Mills Matriculation Higher Secondary School, Mohanur. He has challenged a proceedings issued by the second Respondent, namely, the Director of Matriculation Schools, Madras, dated 12.02.2003, by means of which, he has directed him to pay the Government scales of pay and other attendant benefits to the teaching and non-teaching staff, as requested by the General Secretary of Teachers Front.

34. In view of the findings reached by us as for the entitlement of the matriculation school teachers of the Petitioner management, the necessary corollary would be, the directions ought to be held valid by observing the impugned proceedings of the Directorate of Matriculation Schools dated 12.02.2003 is quite in order and legally sustainable. The Writ Petition does not merit any consideration. Chapter V Article 16(ii) and Chapter VI and Article 18(ii) of Code of Regulation for Matriculation Schools are reasonable and held valid.

35. Our discussion as stated above paves way to conclude that the orders passed by the learned single Judges do not suffer from any infirmities. They deserve to be confirmed and they are accordingly confirmed. Writ Appeals and W.P. No. 10008 of 2004 do not merit consideration.”
(emphasis supplied)

26. The Division Bench of this Court, referred supra, emphatically held that the teaching and non-teaching staff of Matriculation Schools are entitled to equal pay on a par with teaching and non-teaching staff of Government Schools. Judicial discipline demands that the orders of Division Bench and/or Larger Bench should be followed by the learned Single Bench.

27. In the instant case, the second respondent school is a recognized school and in fact, the first respondent had recommended payment of salary to staff of the second respondent school on a par with the staff of the government schools. Be it noted at this juncture that the second respondent vide proceedings dated 17.01.2004 is stated to have passed an order stating that the scale of pay is being fixed from 01.01.1996 and monetary benefit will be given from 12.02.2003. This Court is at a loss to understand as to what prevailed upon the mind of the second respondent to issue a notice of retrenchment on

18.01.2004, which is the very next day.

28.Nothing has been placed on record by the second respondent school to show that there is fall in student strength which necessitated the retrenchment of the petitioners. Even in the affidavit filed in the vacate stay petition, nothing has been averred by the second respondent school to rebut the plea of the petitioners that there is no shortfall in the student strength.

29.Moreover, all the petitioners have already rendered considerable service in the second respondent school and denying them benefits at this stage, in my firm view, unjust and unwarranted in the given facts and circumstances of the case.

30.That apart, it is seen from the records that the petitioners in many of these cases have received the benefits without prejudice to their rights in these writ petitions. Admittedly, many of the petitioners would have crossed the retirement age as of the date of passing of this order and, therefore, ordering reinstatement is of no consequence. So whatever benefit which would be granted to them would be only monetary in nature.

31.For the foregoing reasons:

(a) all these writ petitions are allowed and the impugned orders are set aside;

(b) the petitioners are entitled to all monetary benefits on a par with similarly placed staff in Government Schools in the light of the Hon'ble Division Bench decision referred supra, for the service rendered by them;

(c) the respondents are directed to complete the proceeding within a period of four weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vs

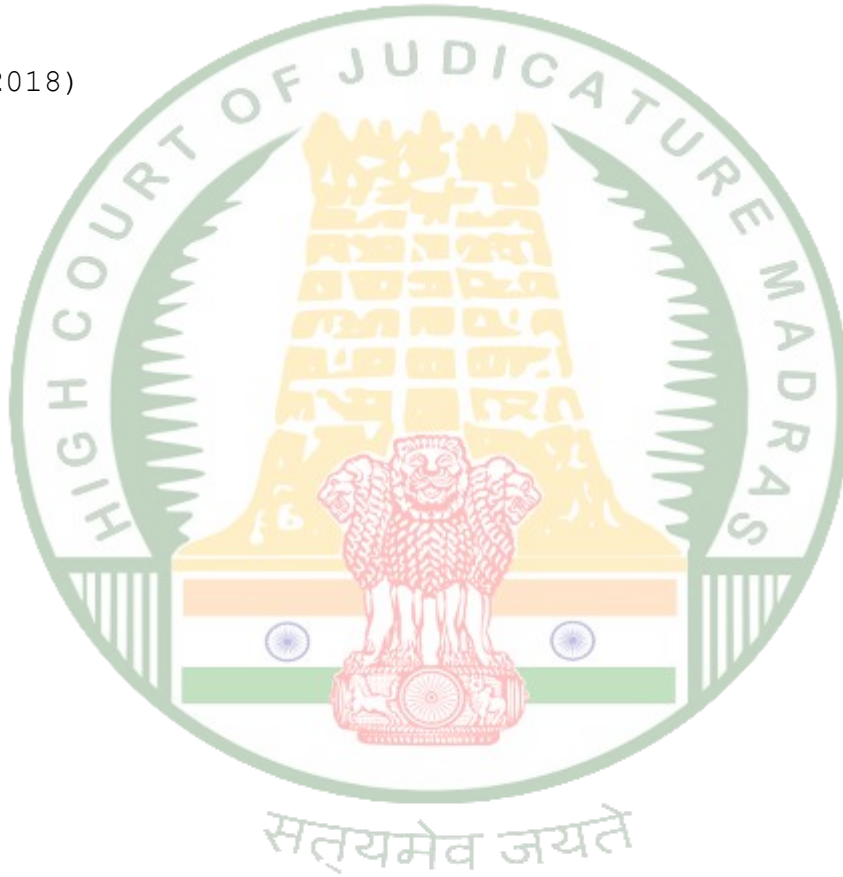
To

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

2. The Special Officer and President,
Salem Co-operative Sugar Mills,
Matriculation Higher Secondary School,
Mohanur, Namakkal District.
3. The Secretary to Government,
School Education Department,
Secretariat, Chennai - 9.

Common order made in
W.P.Nos.8363 to 8368 of 2004

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TR(18/06/2018)



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