

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.06.2018

CORAM:

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

W.P.No.29322 of 2004

1.S.P.Sellammal
2.P.Saraswathi
3.S.Jayam
4.S.Kaliammal
5.V.Jayaraj

.. Petitioners

Vs.

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.

.. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the second respondent to pay the arrears of salary from 12.2.2003 to 31.12.2003 as per the VI Pay Commission and also to pay the scale of pay from 1.5.2004 and to continue to pay the salary, to the petitioners.

For Petitioners : Mr.R.Nalliyappan

For Respondents : Mrs.M.E.Raniselvam
Addl. Govt. Pleader
for respondent No.1

Mr.R.Gopinath
for 2nd respondent

ORDER

This writ petition has been filed by the petitioners seeking a writ of mandamus directing the second respondent to pay arrears of salary from 12.2.2003 to 31.12.2003 as per VI Pay Commission and also to pay the scale of pay from 01.5.2004 and to continue to pay the salary to the petitioners.

2. The petitioners were working as teachers in the second respondent school. According to petitioners, Regulation 18(11) of the Code of Regulations for Matriculation Schools provides that the staff of the Matriculation school will be paid at the rate of Government scale of pay and they are eligible for Selection Grade and Special Grade respectively as any other

recognised schools. Despite specific provision, the second respondent school has not chosen to pay salary on a par with the other teachers working in the Government schools as per VI Pay Commission. It is alleged that from 1.1.1996, the scale of pay and other allowances were not given to the teachers working in the second respondent school.

3. On behalf of the petitioners and other similarly placed persons, an Association has filed W.P.No.37163 of 2002 seeking a direction on the first respondent to hold an enquiry into the grievances of the teachers for uniform scale of pay. After holding enquiry, on 12.2.2003, the first respondent directed the second respondent to pay the Government scale of pay and other attendant benefits to the teaching and non-teaching staff and further directed to award Selection Grade to the teaching and non-teaching staff of the second respondent.

4. Since the second respondent failed to comply with the order of the first respondent, the Association has filed W.P.No.32710 of 2003 seeking to implement the order of the first

respondent dated 12.2.2003. By an order dated 19.11.2003, this Court, directed the second respondent to implement the order of the first respondent dated 12.2.2003 not later than 22.12.2003. By an order dated 17.1.2004, the second respondent re-fixed the scale of pay for the teachers and non-teaching staff with effect from 1.1.1996. However, monetary benefits were given only with effect from 12.2.2003.

5. According to petitioners, the second respondent has released the salary only for a period of four months i.e., from 1.1.2004 to 30.4.2004 and from 1.5.2004 till date, they have not been paid the salary. Despite several representations submitted to the second respondent to pay the salary from 1.5.2004 and also arrears of salary from 13.2.2003 to 31.12.2003, the second respondent has not chosen to pay arrears of salary.

6. In this backdrop, the petitioners have filed the present writ petition seeking the relief stated supra.

7. The respondents have not filed any counter-affidavit.

8.I heard Mr.R.Nalliyappan, learned counsel appearing for the petitioner and Mrs.M.E.Raniselvam, learned Additional Government Pleader appearing for the first respondent and also Mr.R.Gopinath, learned counsel appearing for the second respondent. Perused the materials available on record.

9. The learned counsel appearing for the petitioners submitted that though the second respondent re-fixed the scale of pay as per VI Pay Commission with effect from 1.1.1996, there is no justification in giving monetary benefits only from 12.2.2003. He submitted that the petitioners were working without salary from May 2004 and there is no justification on the part of the respondents in not releasing the salary as also arrears of salary to the petitioners.

10. It appears that 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.

11. In W.P.No.37163 of 2002, this Court, by an 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.

12. It is stated that thereafter the first respondent conducted an enquiry and passed an order on 12.2.2003 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 also stated that despite such order passed by the first respondent, the second respondent did not take any steps to implement the same.

13. Since the second respondent failed to comply with the order of the first respondent, the Association filed

W.P.No.32710 of 2003 to direct the second respondent to implement the order dated 12.2.2003 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 12.2.2003, 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.

14. It is say of the petitioner that the second respondent passed proceedings dated 17.1.2004 stating that the scale of pay is being fixed from 1.1.1996 and that the monetary benefit will be given only from 12.2.2003. According to the petitioners, having re-fixed the pay from 1.1.1996, there is no justification to give monetary benefits only from 12.2.2003 and the petitioners reserve their right to file separate proceedings in so far as non-granting of monetary benefits from 1.1.1996 to 11.2.2003 is concerned. According to the petitioners, they have been paid salary by the second respondent from 1.1.2004 to 30.4.2004 and they were working without salary from May 2004 till date.

15. 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 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.

16. 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 12.2.2003 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.

17. 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.

18. 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)

19. 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 Judge.

20. 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 17.1.2004 is stated to have passed an order stating that the scale of pay is being fixed from 1.1.1996 and monetary benefit will be given from 12.2.2003. This Court finds no reason as to what prevented the second respondent from granting the monetary benefits from 1.1.1996 to 11.2.2003.

Since the petitioners themselves state that they reserved rights to challenge the same in a separate proceedings, I do not want to further comment upon the said aspect.

21. It appears that as per re-fixation of pay, the petitioners have been paid salary from 1.1.2004 to 30.4.2004. But, they have not been paid salary from 12.2.2003 to 31.12.2003. It is not the case of the respondents particularly, the second respondent that for the period from 12.2.2003 to 31.12.2003, the petitioners were not working.

22. According to petitioners, they were working without pay from 1.5.2004. To show that the petitioners were paid salary from 1.5.2004, the second respondent has not produced any records. In the absence of any record to rebut the contention of the petitioners, it is to be presumed that they were working without pay from 1.5.2004.

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

24. Admittedly, by this time, many of the petitioners would have attained the age of superannuation and they should not be denied salary for the work done by them. So whatever monetary benefit which is to be granted to them should be paid by the second respondent as per the Rules.

25. For the foregoing reasons, the writ petition is allowed. The petitioners are entitled to get arrears of salary from 12.2.2003 to 31.12.2003 as per VI Pay Commission on a par with similarly placed staff in Government schools in the light of the Division Bench decision referred supra, for the service rendered by them. The second respondent is directed to pay arrears of salary and also salary referred above, within a period of eight

weeks from the date of receipt of a copy of this order. No costs.
Consequently, W.P.M.P.No.35604 of 2004 is closed.

08.06.2018

Note: Issue order copy on 13.06.2018

vs

Index : Yes

Internet : Yes

Speaking order



WEB COPY

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.



WEB COPY

M.V.MURALIDARAN, J.

VS



Pre-delivery order made in
W.P.No.29322 of 2004
and
W.P.M.P.No.35604 of 2004

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