

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2020

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P. Nos.5257 & 5267 of 2010
and M.P. No.1 of 2010

J.Venkatesan .. Petitioner in W.P. No.5257 of 2010

S.Venkatesan .. Petitioner in W.P. No.5267 of 2010

-vs-

1.Government of Tamilnadu,
rep. by its Secretary,
School Education Department,
Fort St. George,
Chennai-600 009.

2.The Director of Matriculation Schools,
DPI Compound, College Road,
Chennai-600 006.

3.Malco Vidyalaya Matriculation
Higher Secondary School,
rep. By its Correspondent,
Mettur Dam, Salem-636 402. ... Respondents in both cases

Prayer in W.P. No.5257 of 2010: Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified mandamus calling for the records pertaining to the order dated 31.12.2009 passed by the third respondent in Ref.No.MV/P/2009-10, quash the same and consequently direct the third respondent to give government's scale of pay with effect from 01.07.1989, Dearness Allowance from 01.01.1996 and Selection Grade benefits from 01.07.1999 with all consequential benefits after adjusting the amounts already paid and also to pay the petitioner salary and other benefits for the period from 26.02.2000 to 31.12.2009 and Gratuity together with interest at the rate of 12%.

Prayer in W.P. No.5267 of 2010: Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified mandamus calling for the records pertaining to the order dated 31.12.2009 passed by the third respondent in Ref.No.MV/P/2009-10, quash the same and consequently direct the third respondent to give government's scale of pay and Dearness

Allowance with effect from 14.07.1997 with all consequential benefits after adjusting the amounts already paid together with interest at the rate of 12%.

For Petitioner in both cases : Mr.V.Ajoy Khose

For Respondents in both cases : Mrs.P.Kavitha,
Government Advocate
for R1 & 2
Mr.D.R.Raghunath for R3

COMMON ORDER

W.P. No.5257 of 2010 has been filed challenging the letter bearing Ref.No.MV/P/2009-10 dated 31.12.2009 issued by the Malco Vidyalaya Matriculation Higher Secondary School, the third respondent herein and seeking a direction to the third respondent to give Government's scale of pay with effect from 01.07.1989, Dearness Allowance from 01.01.1996 and Selection Grade benefits from 01.07.1999 with all consequential benefits after adjusting the amounts already paid and also to pay the petitioner salary and other benefits for the period from 26.02.2000 to 31.12.2009 and Gratuity together with interest at the rate of 12%.

W.P. No.5267 of 2010 has been filed challenging the letter bearing Ref.No.MV/P/2009-10 dated 31.12.2009 issued by the Malco Vidyalaya Matriculation Higher Secondary School, the third respondent herein and seeking a direction to the third respondent to give Government's scale of pay and Dearness Allowance with effect from 14.07.1997 with all consequential benefits after adjusting the amounts already paid together with interest at the rate of 12%.

2.Learned counsel appearing for the petitioners would submit that the petitioners, who are working in the Private Aided Schools, are entitled to get equal pay on par with the Teachers working in the Government Schools and Government Aided Schools. Therefore, the third respondent be directed to extend the scale of pay of the petitioners on par with the Government Teachers since the impugned order is illegal and contrary to No.18(ii) of the Code of Regulations.

3.Learned counsel appearing for the third respondent, urging this Court to dismiss the writ petitions as not maintainable, taking support from the Full Bench judgment dated 15.10.2015 passed by this Court in W.A. No.1307 of 2009 in the case of the Correspondent vs. T.Sorubarani, reported in 2015 (6) CTC 129 holding that the issue regarding claim of salary by Unaided School Staff on par with the Government School/Aided School

Staff is no longer res integra, sought for dismissal of the writ petitions.

4.It is pertinent to extract the relevant paragraphs as under:

'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 learned counsel for the appellants, namely, K.Krishnamacharyulu & ors. v. Shri Venkateswara Hindu College of Engineering and anr., 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 of that decision, a Writ of Mandamus could not have been issued to the First Respondent in this case.

23.Subsequently, in Satimbla Sharma v. St. Paul's Senior Secondary School, 2011 (4) LLN 1 (SC):2011 (13) SCC 760, the Hon'ble Apex Court in Paragraphs 23 & 25 observed in the following words:

Para 23: We also do not think that the Court could issue a Mandamus to a Private Unaided School to pay the Salary and Allowances equal to the Salary and Allowances payable to Teachers of Government Schools or Government Aided Schools. This is because the Salary and Allowances of Teachers of a Private Unaided School is a matter of contract between the School and the Teacher and is not within the domain of Public Law.

Para 25: Where a Statutory provision casts a duty on a Private Unaided School to pay the same Salary and Allowances to its Teachers as are being paid Teachers of Government Aided Schools, then a Writ of Mandamus to the School could be issued to enforce such statutory duty. But in the present case, there was no statutory provision requiring a Private unaided School to pay to its Teachers the same Salary and Allowances as were payable to Teachers of Government Schools and therefore, a Mandamus could not be issued to pay to the Teachers of Private Recognised Unaided Schools the same

Salary and Allowances as were payable to Government Institutions.'

5.A perusal of the above order dated 15.10.2015 passed by the Full Bench of this Court in W.A. No.1307 of 2009 would show that the claim of salary by Unaided school on par with the Government School is no longer res integra and the Teachers working in Private Unaided Schools are not entitled to get equal pay on par with the Teachers working in the Government Schools or Government Aided Schools.

6.Since the issue raised in the present writ petitions has already been answered by the Full Bench of this Court, the writ petitions are liable to dismissed. In the light of the above order, the writ petitions stand dismissed. Consequently, connected M.P. is closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vga

To

1. The Secretary,
Government of Tamil Nadu,
School Education Department,
Fort St. George,
Chennai-600 009.

2.The Director of Matriculation Schools,
DPI Compound, College Road,
Chennai-600 006.

+1cc to Mr.V.Ajoy Khose, Advocate, S.R.No.21023
+1cc to Mr.B.Girdhera Rao, Advocate, S.R.No.21597
+1cc to the Government Pleader, High Court, Madras S.R.No.22145

W.P. Nos.5257 & 5267 of 2010
and M.P. No.1 of 2010

br(CO)
jrs(29/05/2020)