

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.36982 to 36988 of 2005

M.Pandurangan ... Petitioner in W.P.No.36982 of 2005
S.Sachindanandam ... Petitioner in W.P.No.36983 of 2005
V.Balachander ... Petitioner in W.P.No.36984 of 2005
M.Ayubkhan ... Petitioner in W.P.No.36985 of 2005
S.Gnanasambandhan ... Petitioner in W.P.No.36986 of 2005
A.Shemasundari ... Petitioner in W.P.No.36987 of 2005
M.Vijaya ... Petitioner in W.P.No.36988 of 2005

.vs.

1. State of Tamil Nadu
rep. by its Secretary to Government,
Department of Education,
Fort St.George, Chennai - 9. ... 1st Respondent in all
W.Ps.
2. The Director of School Education,
Chennai - 6. ... 2nd Respondent in all
W.Ps.

The Chief Educational Officer,
Vellore District. ... 3rd Respondent in
W.P.Nos.36982 to 36984 of 2005

The Chief Educational Officer,
Tiruvannamalai District. ... 3rd Respondent in
W.P.Nos.36985 to 36988 of 2005

The Headmaster
Govt. Hr. Sec.School,
Valapandal,
Vellore District. ... 4th Respondent in W.P.No.36982 of 2005

The Headmaster,
Govt. Boys Hr. Sec. School,
Katpadi 632 007. ... 4th Respondent in
W.P.No.36983 of 2005

The Headmaster,
S.V.Hr.Sec.School,
Vellore 632 001.

...4th Respondent in
W.P.No.36984 of 2005

The Headmaster,
Govt. Boys Hr.Sec. School,
Vandavasi - 604 408.
Thiruvananthali District.

... 4th Respondent in
W.P.No.36985 of 2005

The Headmaster,
Govt. Girls Hr.Sec. School,
Arni 632 301.
Thiruvananthali District.

... 4th Respondent in
W.P.No.36986 of 2005

The Headmaster,
Govt.Hr.Sec.School,
Vembakkam,
Thiruvananthali District - 604 410.

... 4th Respondent in W.P.No.36987 of 2005

The Headmaster,
Govt. Girls Hr.Sec. School,
Arni 632 301.

... 4th Respondent in W.P.No.36988 of 2005

* * * * *

Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus directing the Respondents herein to fix the scale of pay of the Commerce Vocational Teachers, on par with P.G Teachers based on the principle of equal pay for equal work from the date of their respective regular appointments.

For Petitioner in all W.Ps. : Mr.E.Veda Bagath Singh

For Respondents 1 to 4 : Mrs.P.Kavitha,
in all W.Ps. Government Advocate

* * * * *

COMMON ORDER

Petitioners have come up with the present Writ Petitions seeking a direction to the Respondents herein to fix the scale of pay of the Commerce Vocational Teachers, on par with P.G Teachers based on the principle of equal pay for equal work from the date of their respective regular appointments.

2. Heard the learned counsel for the parties.

3. Learned Government Advocate appearing for the

Respondents submitted that, the issue in question is squarely covered by a decision of this Court rendered in W.P.No.19224 of 1998 vide order dated 23.03.2009. For better appreciation, relevant paragraphs of the said order are extracted hereunder:

"Para 6. However, it must be stated that the concept of equal pay for equal work cannot be mechanically applied by the courts. It requires relevant consideration by the appropriate Government and it also involves a scientific study with reference to the criteria for payment. In this context, it is necessary to refer to the decision of the Supreme Court in S.C. Chandra and others -vs- State of Jharkhand and others reported in [2007 (8) SCC 279] wherein M. Katju, J., in his concurring judgment, held that grant of pay scales is an executive or legislative function and not a judicial function. The passages found in paragraphs 24 to 28 and 33 to 35 may be usefully reproduced below:-

Para 24. The principle of equal pay for equal work was propounded by this Court in certain decisions in the 1980s e.g. Dhirendra Chamoli v. State of U.P.², Surinder Singh v. Engineer-in-Chief, CPWD³, Randhir Singh v. Union of India⁴, etc. This was done by applying Articles 14 and 39(d) of the Constitution. Thus, in Dhirendra Chamoli case² this Court granted to the casual, daily-rated employees the same pay scale as regular employees.

Para 25. It appears that subsequently it was realised that the application of the principle of equal pay for equal work was creating havoc. All over India different groups were claiming parity in pay with other groups e.g. government employees of one State were claiming parity with government employees of another State.

Para 26. Fixation of pay scale is a delicate mechanism which requires various considerations including financial capacity, responsibility, educational qualification, mode of appointment, etc. and it has a cascading effect. Hence, in subsequent decisions of this Court the principle of equal pay for equal work has been considerably watered down, and it has hardly ever been applied by this Court in recent years.

Para 27. Thus, in State of Haryana v. Tilak Raj it was held that the principle can only apply if there is complete and wholesale identity between the two groups. Even if the employees in the two groups are doing identical work they cannot be granted equal pay if there is no complete and wholesale identity e.g. a daily-rated employee may be doing the same work as a regular employee, yet he cannot be granted the same pay scale. Similarly, two groups of employees may be doing the same work, yet they may be given different pay scales if the educational qualifications are different. Also, pay scale can be different if the nature of jobs, responsibilities, experience, method of recruitment, etc. are different.

Para 28. In State of Haryana v. Charanjit Singh¹ discussing a large number of earlier decisions it was held by a three-Judge Bench of this Court that the principle of equal pay for equal work cannot apply unless there is complete and wholesale identity between the two groups. Moreover, even for finding out whether there is complete and wholesale identity, the proper forum is an expert body and not the writ court, as this requires extensive evidence. A mechanical interpretation of the principle of equal pay for equal work creates great practical difficulties. Hence in recent decisions the Supreme Court has considerably watered down the principle of equal pay for equal work and this principle has hardly been ever applied in recent decisions.

Para 33. "It may be mentioned that granting pay scales is a purely executive function and hence the court should not interfere with the same. It may have a cascading effect creating all kinds of problems for the Government and authorities. Hence, the court should exercise judicial restraint and not interfere in such executive function vide Indian Drugs & Pharmaceuticals Ltd. v. Workmen."

8. In the light of the above, there is no case

made out to entertain the writ petition. It is for the petitioners to move the State Government for such an equalisation of pay. The writ petition will stand dismissed. No costs. The dismissal of the writ petition will not prevent the petitioners from approaching the Government with an appropriate request and needless to state that the representation if any made will be duly considered by the first respondent."

4. In the light of the above decision, this Court is of the view that, there is no case made out to pass orders on merits. Hence, these Writ Petitions stand dismissed. However, Petitioners are at liberty to approach the appropriate Authority in respect of their grievance. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To:

1. The Secretary to Government,
State of Tamil Nadu
Department of Education,
Fort St.George, Chennai - 9.
2. The Director of School Education,
Chennai - 6.
3. The Chief Educational Officer,
Vellore District.
4. The Chief Educational Officer,
Tiruvannamalai District.
5. The Headmaster,
Government Hr.Sec.School,
Valapandal, Vellore Dt.
6. The Headmaster,
Govt. Boys Hr.Sec.School,
Katpadi-632007.
7. The Headmaster,
Govt. Boys Hr.Sec.School,
Vandavasi, Thiruvannamalai Dt.85

8. The Headmaster,
S.V.Hr.Sec.School,
Vellore 632 001.

9. The Headmaster,
Govt.Girls Hr.Sec.School,
Arni, Thiruvannamalai Dt.

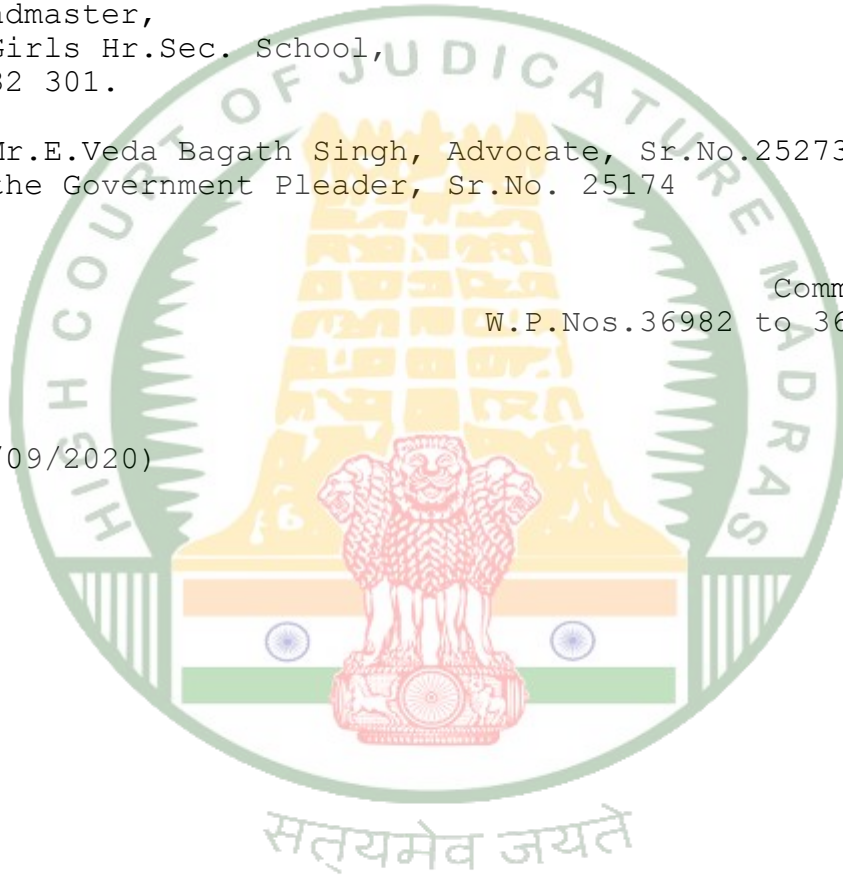
10.The Headmaster,
Govt. Hr.Sec. School,
Vembakkam, Thiruvannamalai Dt.

11.The Headmaster,
Govt. Girls Hr.Sec. School,
Arni-632 301.

+1 cc to Mr.E.Veda Bagath Singh, Advocate, Sr.No.25273
+1 cc to the Government Pleader, Sr.No. 25174

Common Order in
W.P.Nos.36982 to 36988 of 2005

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rr ii (11/09/2020)



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