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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.10.2021

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THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.Nos.18786 & 25921 of 2008
and
M.P.Nos.1 & 1 of 2008

P.Thangamuthu Nadar

... Petitioner in
W.P.No.18786 of 2008

Mr.S.Arulanandaraj

... Petitioner in
W.P.No.25291 of 2008

.Vs.

The Director of School Education,
College Road, Chennai - 6.

... 1st Respondent in
W.P.No.18786 of 2008

The Director of Matriculation School,
College Road, Chennai - 6.

...1st Respondent in
W.P.No.25921 of 2008

The Archdiocean Board of Education,
Pondicherry, Rep. by its Secretary,
Bishop House, Pondicherry.

... 2nd Respondent in
W.P.No.25921 of 2008

St. Paul's Matriculation Higher Secondary School,
Rep. by its Correspondent and Principal,
ThanthaiPeriyar Road, Block-4,
Neyveli - 607 801.

... 2nd Respondent in
W.P.No.18786 of 2008
...3rd Respondent in
W.P.No.25921 of 2008

PRAYER IN W.P.NO.18786 OF 2008:-

Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus to call for the records relating to the order No.SPS/05/MEMO/2007-2008, dated 01/02/2008 passed by the 2nd respondent recovering HRA and Pension from the petitioner salary, quash the same and to direct the 2nd respondent to pay the petitioner



annual increment that fell due in June 2008, EL encashment for the year 2007, the Special Pay 50/- from Dec.2007 and the Special Grade Pay the P.G. Assistant with arrears from June 2008 with 18% interest, Award costs.

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PRAYER IN W.P.NO.25921 OF 2008:-

Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus to call for the records relating to the order dated 25/07/2008 of the 3rd respondent, quash the same, and consequently direct the 2nd and 3rd respondents to pay the Petitioner Annual Increment, Earned Leave, Encashment as given to others in the 3rd respondent school and D.A. as given to other Government Teachers, Award costs.

For Petitioners : Mr.V.AjoyKhose

For Respondents : Mr.C.Selvaraj
Government Advocate - R1

Mr.I.Arokiasamy
For R2 in W.P.No.18786 of 2008
For R3 in W.P.No.25921 of 2008

Ms.Arul Mary
For R2 in W.P.No.25921 of 2008

C O M M O N O R D E R

The petitioner in W.P.No.25921 of 2008 seeks a quash of order dated 25.07.2008 passed by St. Paul's Matriculation Higher Secondary School/R3 and claims service benefits such as annual increments, surrender and earned leave and dearness allowance. She further prays that she be permitted to continue in service till the age of 60 years. The petitioner in W.P.No.18786 of 2008 seeks quash of order dated 01.12.2008 relating to deduction of House Rent Allowance and Pension from her salary and a direction to St. Paul's Matriculation Higher Secondary School/R2 to pay him annual increments, encashment of earned leave for the year 2007, Special Pay from December, 2007 and Special Grade Pay for PG Assistant along with arrears from June, 2008 at 18% interest.

2. Both the petitioners are employed with R2/R3 School/. R2/R3 is admittedly, a Matriculation School and a preliminary objection is raised on the maintainability of these writ petitions by Mr.Arokiasamy, learned counsel appearing for the School. He relies upon a decision of a Full Bench of this Court in the case of Correspondent/Principal, Arokiameda Matriculation



Higher Secondary School, Pollachi V. T.Sorubarani (deceased) and others ((2015) 8 MLJ 257). The prayer in that writ petition was for a Mandamus directing the respondents to grant parity of pay between the remuneration paid to Matriculation School Teachers who had approached the Court, and Government School Teachers.

3. The school in that case was also a Matriculation Higher Secondary School as in the present case, and the question that arose was the impact and weightage to be attributed to the Code of Regulations of Matriculation Schools upon the functioning of the schools. The question that fell for the consideration of the Full Bench was in regard to whether private educational institutions could be prevailed upon to ensure equal pay for equal work for the teaching staff in their employ, as compared with the teachers in government schools.

4. Private schools come under the purview of the Directorate of Matriculation Schools, governed by the Code of Regulations of Matriculation Schools (in short 'code'). The Bench noted that after the VIth Pay Commission had raised the monthly remuneration of Government school teachers, there was a clarion call for raising the salaries of private school teachers to the same level.

5. The Bench took note of the judgments of the Hon'ble Supreme Court in the case of T.M.A Pai Foundation V. State of Karnataka (AIR 2003 SC 355), and P.A.Inamdar V. State of Maharashtra (AIR 2005 SC 3226), whereunder the fundamental right conferred by Article 30(1) of the Constitution of India upon linguistics and religious minorities to establish and administer educational agencies of their choice through transparent merit-based system of education and regulation of a reasonable fee structure, was reiterated. A ceiling had been imposed upon the collection of tuition fee, and a Fee Monitoring Committee appointed for the State of Tamil Nadu following the direction in Islamic Academy of Education.

6. The very issue that concerned the Full Bench, as to whether a regulation may be imposed upon the management and administration of a Matriculation School, came to be considered in the case of T.M.A.Pai Foundation and question number 5 and the answer thereto are relevant in this context, reading as follows:

Q.5. (c) Whether the statutory provisions which regulate the facets of administration like control over educational agencies, control over governing bodies, conditions of affiliation including recognition/withdrawal thereof, and appointment of staff, employees, teachers and Principal including



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their service conditions and regulation of fees, etc. would interfere with the right of administration of minorities?

A. So far as the statutory provisions regulating the facets of administration are concerned, in case of an unaided minority educational institution, the regulatory measure of control should be minimal and the conditions of recognition as well as the conditions of affiliation to an university or board have to be complied with, but in the matter of day-to-day management like the appointment of staff, teaching and non-teaching, and administrative control over them, the management should have the freedom and there should not be any external controlling agency. However, a rational procedure for the selection of teaching staff and for taking disciplinary action has to be evolved by the management itself.

For redressing the grievances of employees of aided and unaided institutions who are subjected to punishment or termination from service, a mechanism will have to be evolved, and in our opinion, appropriate tribunals could be constituted, and till then, such tribunals could be presided over by a Judicial Officer of the rank of District Judge.

The State or other controlling authorities, however, can always prescribe the minimum qualification, experience and other conditions bearing on the merit of an individual for being appointed as a teacher or a principal of any educational institution.

Regulations can be framed governing service conditions for teaching and other staff for whom aid is provided by the state, without interfering with the overall administrative control of the management over the staff. Fees to be charged by unaided institutions cannot be regulated but no institution should charge capitation fee.

7. The Bench held, in conclusion, that the Code was merely a set of Regulations which enabled the administration of Matriculation Schools, they had no statutory effect and could not be enforced in a court of law. Since the Government did not exercise any administrative control in that regard, reliance on various Articles of the Code that provide for/suggested parity of pay between Government school teachers and private school



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teachers were held to be of no assistance to those petitioners. The Full Bench categorically held that the salary structure followed in unaided institutions is a matter of contract between the teacher and school, and fell outside the domain of public law.

8. Bearing in mind the prayer, which was for a mandamus, and the relief sought by the petitioners, the Writ was held not to be maintainable, placing reliance upon the judgments of the Hon'ble Supreme Court in the case of Sushmita Basu V. Ballygunge Siksha Samity ((2006) 7 SCC 680) and Satimbala Sharma V. St. Paul's Senior Secondary School (8 MLJ 554). At paragraph 23 thereof, the Bench states that a Writ of Mandamus may be issued only if an element of public law were involved.

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.'

9. Per contra, Mr.Khose relies upon two subsequent judgments of the Hon'ble Supreme Court in the case of Janet Jeyapaul V. SRM University and others ((2015) 16 SCC 530) and Secretary, Mahatma Gandhi Mission and another V. Bhartiya KamgarSena and others ((2017 4 SCC 449)).

10. In the case of Janet Jayapaul (supra), the institution in question was a Deemed University and an objection was raised as to maintainability of the writ petition. The Hon'ble Supreme Court made a distinction between a private entity engaged in private functions and one that is engaged in rendering a public duty or functionality. The imparting of education being a public duty and the respondent in that case falling within the sweep of the University Grants Commission Act, 1956, the writ petition was held to be maintainable.

11. In the case of Mahatma Gandhi Mission (supra), the Maharashtra Universities Act, 1994 and the Rules framed thereunder vested power in the State Government to regulate the service conditions of the staff in unaided, affiliated, private colleges. The Bench crystallised the issue as a determination of legal rights of teaching and non-teaching staff of unaided Engineering Colleges, to receive pay in terms of the recommendations of the Pay Commission.



12. In conclusion, the Bench saw no justification in excluding non-teaching employees of unaided educational institutions from the benefit of Pay Commission recommendations seeing as the benefit of revised pay scales was available to non-teaching employees of aided educational institutions. Such discrimination was found to be violative of Article 14 of the Constitution of India.

13. The observations from paragraph 83 are relevant and deal with the many facets of the doctrine of equality and after detailed discussion of a plethora of decisions, the artificial classification created between different classes of citizens engaged in a similar kind of duty have been eschewed and eliminated.

14. The Court categorically states that such artificial classification that would lead to a discriminatory application of law must be nullified, such as the distinction made between aided and unaided educational institutions. The point that the educational institutions in question did not receive any funding/aid from the State, therefore, made no difference to the Court that compelled the appellants, in conclusion, to work out remedies and find ways and means to meet the financial liability arising out of their obligations with their employees.

15. Thus, and relying upon the aforesaid judgments, learned counsel for the petitioner would say that the decision of the Full Bench in the case of Correspondent/Principal, Arokiamada Matriculation Higher Secondary School, Pollachi no longer holds the field, since it has been impliedly differed with by subsequent judgments of the Hon'ble Supreme Court as aforesaid.

16. I have heard learned counsel and studied the case files and judicial precedents cited, carefully.

17. The Full Bench was persuaded to reject the prayer for mandamus based on the position that accepting the petitioner's case for parity would indirectly force the private institution to surrender the fundamental right guaranteed to it in regard to its management of the school. The right to carry on business is enshrined and guaranteed under the Constitution and this has weighed substantially with the Bench. The question that arose for the consideration of the Full Bench is thus different and distinct from the prayer in the matters before me.

18. In Janet Jeyapaul, the decision of the learned single Judge dated 08.04.2013 was rendered prior to the decision of the Full Bench. The question of maintainability of the writ petition was discussed in detail by Hon'ble Justice V.Ramasubramanian (as be then was) holding the matter to be maintainable and directing



SRM University to reinstate Janet Jeyapaul in service. The operative portion of the decision in regard to maintainability reads thus:

'MAINTAINABILITY:

14. There is no dispute on facts that the first respondent is a deemed University recognised in terms of Section 3 of the University Grants Commission Act, 1956. It is an entirely self-financing institution and it does not receive any grant-in-aid.

15. In *K. Krishnamacharyulu vs. Sri Venkateswara Hindu College of Engineering* (1997 (3) SCC 571). 7 persons employed on daily wages as Lab Assistants in a Private College, approached the High Court by way of a writ petition, seeking equal pay. At that time, the College was not in receipt of any grant-in-aid. Answering the question whether a writ under Article 226 is maintainable or not, the Supreme Court pointed out:-

"In view of the long line of decisions of this Court holding that when there is an interest created by the Government in an institution to impart education, which is a fundamental right of the citizens, the Teachers who impart the education get an element of public interest in the performance of their duties. As a consequence, the element of public interest requires regulation of the conditions of service of those employees on a par with Government employees."

16. Going further, the Supreme Court opined in the aforesaid case that the Teachers duly appointed to a post in the Private Institution also are entitled to seek enforcement of the orders issued by the Government. The Court held as follows:

"When an element of public interest is created and the institution is catering to that element, the Teacher, being the arm of the institution, is also entitled to avail the remedy provided under Article 226; the jurisdiction is very wide."



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Having opined so, the Supreme Court also said something, which left some space for future exploitation. The space so left read as follows:-

“It would be a different position, if the remedy is a private law remedy.”

Eventually, the writ petition was held maintainable.

17. In *Amir-Jamia and Others vs. Desharath Raj* (ILR 1969 Delhi 202), a Division Bench of the Delhi High Court was concerned with the question as to whether Jamia-Millia, registered as a Society under the Societies Registration Act, receiving substantial grant-in-aid, but maintained as an autonomous body, was amenable or not to the jurisdiction of the High Court under Article 226.

18. After finding that the institution in question became an University in terms of Section 3 of the University Grants Commission Act, 1956 and after taking note of the various provisions of the University Grants Commission Act, which entitled the University Grants Commission to exercise control over such Universities, the Division Bench of the High Court came to the conclusion that Jamia-Millia was discharging a State function and that in doing so, it could not be regarded as a private institution. The Division Bench opined that Jamia-Millia was discharging a public function and hence it was subject to public duties and rights. Eventually, the Court held as follows:-

“(7) To sum up, a body of persons may become a public authority either because in its inception it is created by a statute or because the Governmental authority is conferred upon it later either by statute or even by executive action. The governmental authority to confer degrees on its students was the right derived by the Jamia Millia from a notification issued by the Government under the University Grants Commission Act, though Jamia Millia had existed before the notification as a privately formed institution. From the moment the power to confer degrees was



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given to Jamia Millia under a statute which expressly called it an "authority" there can be little doubt that it was an authority of a public nature and as such amenable to the jurisdiction of this Court under Article 226. Our decision to regard it as a public authority is, therefore, fully covered by the principles underlying Article 226 and Article 12 of the Constitution, though we may be adding a new example of the principle. The novelty is concerned only with the fact that the Jamia Millia became a public authority not because it was created by a statute, but because it was recognised as a University and given the power to confer degrees under the statute."

19. Incidentally, the Division Bench also held in the penultimate paragraph of its decision that educational institutions no less than other public authorities are bound to observe rules of natural justice before exercising the drastic powers of expulsion of students and that if they failed to do so, the Court would be compelled to intervene.

20. In Prof. Dr. V. Ganeshan vs. Central Institute of English and Foreign Languages (2000 (1) ALT 519), a learned Judge of the Andhra Pradesh High Court was concerned with a challenge to the appointment of a person as a Rector and the delegation of certain powers and duties of the Vice Chancellor to him. The institute involved in the said case was registered as a Society under the Andhra Pradesh Societies Registration Act, but it was established by the Ministry of Human Resources Development, Government of India. The institution had the status of a deemed University. After taking note of several decisions, including the decision of the Supreme Court in Unni Krishnan, the learned Judge of the Andhra Pradesh High Court held that the Central Institute of English and Foreign Languages was an authority within the meaning of Article 12 of the Constitution, since it was conferred the power to grant Diplomas and Degrees and also since the entire financial assistance was provided by the Central Government.



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21. In *Dr. Kailash Bihari vs. Birla Institute of Technology* (MANU/JH/1223/2003), the initiation of disciplinary proceedings, the appointment of an Advocate as Enquiry Officer and the suspension of an Assistant Professor came under challenge. Before the Division Bench, the question of maintainability of the writ petition was also raised. But the issue of maintainability was decided against the institution by the Division Bench of the Jharkhand High Court, solely on the basis of the decision of the Supreme Court in *K. Krishnamacharyulu*.

22. In *Centre for Police Research vs. Brahma Chellaney* (MANU/DE/071/2010), the termination of service of a Research Professor employed in the Centre for Policy Research was upheld by a learned Judge of the Delhi High Court. The Centre filed an appeal and before the Division Bench, the question of maintainability was pressed. Though several decisions of various Courts were noted by the Division Bench, the Division Bench ultimately followed the triple test laid down by the Supreme Court in *Binny Ltd vs. V. Sadasivan* (2005 (6) SCC 657), to come to the conclusion that the writ petition was maintainable. The triple test was (i) whether the private body was discharging a public function (ii) whether the decision sought to be corrected or enforced was in the discharging of a public function and (iii) whether the public duty imposed is or is not of a discretionary character. The Court also took note of the observation of the Supreme Court that the scope of *Mandamus* is determined by the nature of duties to be enforced rather than the identity of the authority against whom it is sought. Eventually, the Division Bench pointed out in paragraph 37 of its decision as follows:-

"37. We are, thus, unequivocally of the view that in matters of service conditions including of appointment and termination and grievances arising therefrom the scrutiny under Article 226 of the Constitution of India cannot be excluded having a public element and thus the learned single Judge was right in coming to the conclusion that the matter could be examined under Article 226 of the Constitution of India."



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23.However, Ms.B.Saraswathi, learned counsel for the first respondent relied upon a few decisions in support of her contention that the writ petition is not maintainable. Now let me have a look at those decisions.

24.In Sunil Kumar Saxena vs. Holy Cross Ashram Higher Secondary School (CDJ 2009 MPHC 664), the oral termination of the services of a Teacher of a Higher Secondary School, was in dispute. The single Judge dismissed the writ petition as not maintainable and the Teacher filed an appeal before the Division Bench of the Madhya Pradesh High Court. The Division Bench, after taking note of the decision in K.Krishnamacharyulu, referred to the decision of the Supreme Court in S.K.Varshney vs. Principal, Our Lady of Fatima Higher Secondary School (Civil Appeal No.8783 of 2003 decided on 19.7.2007) and held that though a writ petition against an unaided educational institution is maintainable, the termination of services of the employee of such an institution does not involve an element of public law. Therefore, the Division Bench held the writ petition to be not maintainable.

25.In M.Mahendrani vs. The Branch Manager, Citicorp Finance India Limited (CDJ 2010 MHC 594), M.Jaichandren, J., held that a writ petition filed against a private Non-Banking Finance Company, was not maintainable. In Dr.A.Safiullah vs. The Director of Collegiate Education (W.P.No.14796 of 2009 decided on 14.7.2011), K.Chandru, J., held that the termination of the services of a Lecturer by a minority educational institution, cannot be set aside.

26.But the decisions cited by the learned counsel for the first respondent have no application to the question on hand. The decision of the Division Bench of the Madhya Pradesh High Court in Sunil Kumar Saxena, did not take note of the fact that even the claim for parity of pay scales was held to have an element of public law, in K.Krishnamacharyulu. The decision of the learned Judge of this Court in Mahendrani, did not deal with the appointment to an educational institution governed by the provisions of the University Grants Commission Act, 1956. Similarly, the judgment of K.Chandru, J., is also not



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applicable, since it dealt with an employee of the self-financing section of a minority educational institution. There is a vast distinction between a self-financing University which is declared as a deemed University under the University Grants Commission Act, 1956 and a minority college to which some of the provisions of the Tamil Nadu Private Colleges (Regulation) Act, 1976, do not apply.

27. Even the decision of S. Nagamuthu, J., in J. Varghese Riju vs. The Director of Collegiate Education (W.P.No.12391 of 2012 decided on 17.9.2012), is not applicable, since the learned Judge did not go into the question whether the management of Loyola College was amenable to the writ jurisdiction or not. Therefore, the decisions cited by the learned counsel for the first respondent, are not of any assistance.

28. On the contrary, it is clear from the decision in K. Krishnamacharyulu, and the decisions of the Delhi High Court, cited supra, that the recruitment of Teachers to University which are declared to be so by virtue of Section 3 of the University Grants Commission Act, 1956, is certainly a public function, governed and regulated by Statute. Therefore, it is no more open to Universities like the first respondent to question the jurisdiction of this Court, in matters of this nature. Hence, the first issue regarding maintainability is answered in favour of the petitioner.'

19. The matter thereafter travelled in Writ Appeal at the instance of SRM University and the Bench rendered its decision on 04.07.2013 reversing the order under appeal. Janet Jeyapaul then carried the matter to the Hon'ble Supreme Court in Civil Appeal No.14553 of 2105, and the appeal came to be allowed on 15.12.2015, the Bench holding that a Deemed University is an 'authority' within the meaning of Article 12 of the Constitution of India, amenable to Writ Jurisdiction. This judgment was rendered after the decision of the Full Bench.

20. The Hon'ble Supreme Court held that judicial review of the discharge of public functions by an authority which was not a public authority was permissible. The order passed by SRM University terminating the services of a member of its teaching staff was held to be amenable to Writ jurisdiction. The Bench noted that the institution was engaged in imparting education



and higher studies to students at large, which constitutes a public function. Moreover, it was a Deemed University under Section 3 of the University Grants Commission Act.

21. The alternate contention of the University before the Bench was that the petitioner was liable to be relegated to the District Judge for redressal of her grievances. The suggestion was held to be unworkable as the direction of the Constitution Bench in T.M.A.Pai Foundation (supra) to the effect that Tribunals be formulated 'remained a pipe dream', and since that Writ Petition had been entertained as early as in 2003.

22. The third/second respondent before me is a Matriculation School which receives no aid, whereas, SRM University is a Deemed University, as defined under the University Grants Commission Act. However, the larger question which appears to have persuaded the Hon'ble Supreme Court both in the case of Janet Jeyapaul(supra) as well as Mahatma Gandhi Mission (supra) in holding the writ petitions maintainable was that the institutions in question are engaged in imparting education, which is a public duty.

23. The distinction sought to be drawn between private and other schools engaged in the dissemination of education pales into insignificance in the light of the judgments discussed above. The irrefutable conclusion to be drawn is that while a writ of mandamus will not lie as against a private educational institution, recourse to the remedy of judicial review, is always available to an aggrieved stakeholder in the system of private education, in appropriate circumstances.

24. The argument that an authority is not a public authority, amenable to writ jurisdiction is not unique to schools alone and has been raised in the context of other entities, such as banks and other agencies. In this context, the Hon'ble Supreme Court in the case of Zee Telefilms Limited and another v. Union of India and others (2005 4 SCC 649) states, Thus, it is clear that when a private body exercises its public functions even if it is not a State, the aggrieved person has a remedy not only under the ordinary law but also under the Constitution, by way of a writ petition under Article 226. The tests laid down by the Hon'ble Bench in this regard are as below:

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In our view, the complex problem has to be resolved keeping in view the following further tests :



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i) When the body acts as a public authority and has a public duty to perform;

(ii) When it is bound to protect human rights.

(iii) When it regulates a profession or vocation of a citizen which is otherwise a fundamental right under a statute or its own rule..

(iv) When it regulates the right of a citizen contained in Article 19(1)(a) of the Constitution of India available to the general public and viewers of the game of cricket in particular.

(v) When it exercises a de facto or a de jure monopoly;

(vi) When the State out-sources its legislative power in its favour;

(vii) When it has a positive obligation of public nature. These tests as such had not been considered independently in any other decision of this Court.

We, thus, would have to proceed to determine the knotty issues involved therein on a clean slate.

These traditional tests of a body controlled financially, functionally and administratively by the Government as laid down in Pradeep Kumar Biswas (supra) would have application only when a body is created by the State itself for different purposes but incorporated under the Indian Companies Act or Societies Registration Act.

25. Thus, if an act of omission or commission by a private entity falls within the domain of public duty, writ jurisdiction may be revoked. Courts have, also cautioned that merely became an authority is a public authority or a private authority rendering public/state functions, will not make it amenable to writ jurisdiction as the specific act of omission or commission must also be established to be one that impacts larger public cause/contain an element of public functionality.

26. The above specific and fine distinction, in my view, would not have the same rigour in the case of an educational institution for two reasons: one, the character of education as a public duty and second, as on date, there are no special tribunals/courts to address such grievances. Till such time the



special courts/tribunals are constituted, it is the constitutional Courts that must fill that need, as appropriate.

27. Private schools form the backbone of the system of school education in Tamil Nadu. The stake holders in the private school system cannot be left with no remedy in regard to lapses/errors in the functioning of such institutions. All the more, for the reason that the dissemination of education constitutes a public/state function, which in this case is ably and substantially supported by the private school system of education.

28. Reliance upon the decision of the Full Bench will not advance the case of the respondents herein as what was sought therein was a mandamus directing the respondents to accord parity in the pay of teachers in private institutions with those of teachers in Government institutions. It was in those circumstances, that the Bench rejected the plea holding that no mandamus could be granted as sought for.

29. The judgments in the case of TMA Pai Foundation and P.A.Inamdar protect the rights of private institutions such that no mandamus, contrary to the observations contained in the judgments would lie. This is the position as applied and settled by the Full Bench. However, judicial review of proceedings in private schools, including matriculation schools are permissible.

30. The writ petitions are held to be maintainable. The Full Bench, while rejecting the plea for mandamus has opined that it was high time that a separate Tribunal be constituted or a Court to be designated as a Special Court to deal with issues and disputes arising from service conditions of teaching staff in private institutions. In light of discussion as above, it would be appropriate and high time indeed that the State look into the constitution of a specialized Tribunal, either by way of conversion of existing Courts into competent Special courts or by way of constitution afresh, to adjudicate upon the disputes relating to the functioning of educational institutions.

31. On merits, the challenge is to two orders which deal with the quantification of Leave entitlement, House Rent Allowance and other monetary emoluments which the petitioners claim they are entitled to. There is no doubt that the school is bound to compute the emoluments in a proper manner. However and having said that the writ petitions are maintainable, this Court is not inclined to enter into the arena of computation of benefits, as neither the applicable terms and conditions qua the petitioners and the schools nor the particulars of the amount



claimed are before the Court and the Court cannot be called upon to render a finding in vacuum.

32. However, no recovery of any alleged dues as proposed shall be effected from the petitioners in the light of the judgment of the Hon'ble Supreme Court in the case of State of Punjab & Others vs. Rafiq Masih (White Washer), as such recovery is imminent upon their retirement. The directions of the Hon'ble Supreme Court in this regard are set out at paragraphs-12, 13 and 14 extracted below:

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12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.



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13. We are informed by the learned counsel representing the appellant- State of Punjab, that all the cases in this bunch of appeals, would undisputedly fall within the first four categories delineated hereinabove. In the appeals referred to above, therefore, the impugned orders passed by the High Court of Punjab and Haryana (quashing the order of recovery), shall be deemed to have been upheld, for the reasons recorded above.

14. The appeals are disposed of in the above terms'

33. Further, the respondents in counter state that the petitioners have been permitted to work till the age of 60 years. Thus this grievance of the petitioners stands addressed in their favour. In summary, the impugned orders are confirmed except to the extent indicated above. These writ petitions are disposed as above. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

S1

To

1. The Director of School Education,
College Road, Chennai - 6.
2. The Director of Matriculation School,
College Road, Chennai - 6.

+4ccs to Mr.I.Arokiasamy, Advocate, S.R.Nos.52694 & 52695
+1cc to the Government Pleader, S.R.Nos.53507 & 53508

W.P.NOS.18786 & 25921 OF 2008 AND
M.P.NOS.1 & 1 OF 2008

GSM(CO)
PBS/25/11/2021