BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 21.09.2021
CORAM:
THE HONOURABLE MR.JUSTICE S.S. SUNDAR
W.P.(MD).Nos.1393, 3438 of 2014 and 9913, 9914 of 2013

1.Annamalai ... Petitioner in W.P(MD)No.1393 of 2014
2.Augustine ... Petitioner in W.P(MD)No.3438 of 2014
3.P.Singaravelan ... Petitioner in W.P(MD)No.9913 of 2013
4.Kalaiarasan ... Petitioner in W.P(MD)No.9914 of 2013

Vs.

1.Saint John's I.T.I Society, Manjampatty,
Rep by its Secretary,
Saint John's I.T.I Manjampatty & Post
Manapparai Taluk, Trichy District.

2.The Principal,
Saint John's Private Industrial Training Institute,
Manjampatty & Post, Manapparai Taluk,
Trichy District.

3.Joint Director of Employment & Training,
Department of Employment & Training,
Chepauk, Madras-5.

4.Regional Joint Director,
Dept. of Employment and Training,
Mannarpuram,
(Govt. Multi-Department Office, 1st Floor)
Trichy.

5.Director of Employment and Training
Guindy (Near Govt I.T.Ts)
Madras. ... Respondents in all W.Ps

Prayer in W.P(MD)No.1393 of 2014: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Mandamus, directing the respondents 1 & 2 to pay 2/3rd of what is being paid as salary to the staff of the Government's I.T.I as salary to pay to the petitioner a sum of Rs.11,84,805/- towards unpaid salary and to pay salary in future from 01.01.2013 at said rate.

Prayer in W.P(MD)No.3438 of 2014: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Mandamus, directing the respondents 1 & 2 to pay 2/3rd of what is being paid as salary to the staff of the Government's I.T.I as salary to the petitioner and to pay to him a sum of

Rs.8,93,203.20/- towards unpaid salary and to pay salary in future from 01.01.2013 at said rate.

Prayer in W.P(MD)No.9913 of 2013: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Mandamus, directing the respondents 1 & 2 to pay 2/3rd of what is being paid as salary to the staff of the Government's I.T.I as per the resolution and recommendation of the (NCVT) National Council for training in vocational Trades 1996 from 16.08.1996 with 12% interest per annum, with a further direction to the respondents 3, 4 & 5 to implement the said recommendation of the NCVT passed on 31.11.1995.

Prayer in W.P(MD)No.9914 of 2013: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Mandamus, directing the respondents 1 & 2 to pay 2/3rd of what is being paid as salary to the staff of the Government's I.T.I as per the resolution and recommendation of the (NCVT) National Council for training in vocational Trades 1996 from 16.08.1996 with 12% interest per annum, with a further direction to the respondents 3, 4 & 5 to implement the said recommendation of the NCVT passed on 31.11.1995.

For Petitioners in all W.Ps	: Mr.R.G.Shankar Ganesh
For R1 & R2 in all W.Ps	: Mr.A.Xavier Arulraj for Mr.V.Johnkennedy
For R3 & R5 in all W.Ps	: Mr.M.Lingadurai Government Advocate

COMMON ORDER

These Writ Petitions are filed for issuance of a Writ of Mandamus directing the first and second respondents to pay 2/3rd of what is being paid as salary to the staff of the Government's I.T.I, as salary to pay to the petitioners.

2.The petitioners are the teaching staffs working in the industrial institute run by the first respondent which is a recognized minority institution. The issue raised in these writ petitions is whether the petitioners are entitled to 2/3rd of the salary that is being paid to the equivalent level staff members of Government I.T.Is, as recommended by N.C.V.T. The first respondent is an institution having affiliation with National Council for training in Vocational Trades (N.C.V.T). It is the specific case of the petitioners that the National Council for training in Vocational Trades has recommended payment of minimum 2/3rd of the salary paid to the Government Staffs of equivalent level to the faculty members like the petitioners and that the recommendation had also been accepted by the Central Government by its letter dated 16.08.1996. The petitioner has produced the letter dated 16.08.1996 issued by the Joint Director of Training Department of Employment and Training, Chepauk, Chennai, before this Court. The Joint Director of Training Department of Employment and Training, has stated that he was directed to inform the Secretaries of all State Governments to ensure the payment of staff of private ITI's 2/3rd of salary being paid by the State Government to the equivalent level faculty/staff members. However, no order was passed by the Central Government or the State Government in exercise of their powers under any statute is annexed.

3.The learned counsel appearing for the petitioners relied upon the judgment of the Hon'ble Supreme Court, in the case of ***K.KRISHNAMACHARYULU AND OTHERS -vs- SRI VENKATESWARA HINDU COLLEGE OF ENIGNEERING AND ANOTHER***, reported in ***AIR 1998 SC 295***, wherein, the Hon'ble Supreme Court has held that incase the Government issues any order exercising their function in public domain conferring upon the teachers a right to claim pay scale on par with the Government employees, the institutions are bound to pay the salary on par with the Government Servants.

4.The learned counsel relied upon the judgment of the Hon'ble Supreme Court in the case of ***SHIVAJI SHIKSHAN PRASARAK MANDAL AND OTHERS -vs- STATE OF MAHARASHTRA AND OTHERS***, reported in ***2005 STPL 14039 SC***, wherein, the Hon'ble Supreme Court has held as follows:

> *"8.Learned Senior Counsel appearing for the appellant Trust has contended that the Trust is not getting any aid from the Government and the teachers are not liable to be paid as per the government orders issued by the Government. It is contended that the government order issued is not applicable to the unaided institutions. The government order is produced as Annexure R-3 which says that keeping in view all the Central Government decisions about the Fifth Pay Commission recommendations Maharashtra State has appointed a Commission and that the revised pay scales will be implemented for the teachers and non-teaching staff of the government and non-government schools both primary/secondary/higher secondary and also teachers and non-teaching staff of the training colleges.*
>
> *9.It may also be noticed that under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, Section 3(1) says that the provisions of the Act shall apply to all private schools in the State of Maharashtra, whether receiving any grant-in-aid from the State Government or not. Section 16 further states that the State Government may be notification in the Official Gazette, make rules for carrying out the purpose of this Act and Section 16(2)(1) says that the State Government may by the Official Gazatte prescribed minimum qualifications for recruitment of employees of private schools (including in*

procedure), (b) their scales of pay and allowances. There is no dispute that these provisions of the Regulation Act are applicable to the appellant school.

10. Learned Senior Counsel for the appellant contended that the appellant school is distinct as it is not receiving any aid. Even in the case of Government order regarding pension, it is specifically stated that the government order is not applicable to the schools which are not getting aid from the Government. We do not think that the said government order has any application to the facts of this case. The Division Bench of the High Court was justified in holding that the appellant school was liable to pay the salary and allowances on the basis of the Fifth Pay Commission recommendations and are bound by Maharashtra Act 3 of 1978.

11.Learned Senior Counsel for Respondents 4 to 7 submitted that the High Court was not justified in holding that the salary and allowances should be paid from 01.05.1999. It is submitted that once it is accepted that the Fifth Pay Commission recommendation was applicable to the respondent teachers, it should be with effect from 01.01.1996. The High Court has given a specific reason that the government order itself was issued in 1999 and the main source of income of the school was the fees collected from the students, therefore, the appellant Trust would not be in a position to recover any amount from the students who had already passed out of the school and hence, they are not liable to pay the salary and allowances with effect from 01.01.1996. It may also be noticed that the Government while issuing the government order in 1999, the salary and allowances which had accrued for the period from 1996 t0 1999, was not paid in cash but it was credited to the provident fund. Learned counsel for the appellant Trust also pointed out that the Government of Maharashtra, by a separate resolution, implemented the Fifth Pay Commission recommendations to the teaching and non-teaching staff of unaided engineering colleges including architectural and pharmacy colleges with effect from 01.08.2000. These colleges expressed their inability to pay the salary payable under the revision of pay scales with effect from 01.01.1996 and the Government was pleased to accept their application and implemented the same with effect from 01.08.2000. For the same reason the appellant Trust also was not bound to pay the salary with effect from 01.01.1996 and the reason given by the High Court was wholly correct.

12.We find no reason to interfere with the judgment of the Division Bench. The appeals are *dismissed. The parties to bear their own costs."*

5.In tune with the judgments above referred to a few more judgments were also relied upon by the learned counsel appearing for the petitioners. Following the judgment of Hon'ble Supreme Court reported in AIR 1998 SC 295 above referred to, the Kerala High Court, in the case of ***Association of Industrial Training Centres of Kerala & another -vs- the Director of Training, Directorate of Employment and Training***, upheld the circular issued by the Department of Industrial Training, Kerala, directing private institution affiliated to NVCT to pay a minimum of 2/3rd of the salary being paid to the faculty/staff members of equivalent level of Government I.T.Is. It has been held as follows:

> *"In the present case, the State has issued necessary circulars or orders directing the private managements to pay at least 2/3rd of the salary given to the Government Teachers. Petitioners cannot shirk from their duties to pay the salary as directed by the Government. As held by the Supreme Court, petitioners are running institutions imparting education to the public. Public are availing of the benefit of education from the institutions. Hence, they are bound to pay salary as directed by the Government. This Court is competent to direct the private educational institutions to pay salary at the same rate which has been issued to Government institutions. Training Manual says that elaborate provisions have been made regarding the imparting of craftsmen training centre. It also lays down the staff pattern for the training institutes. The terms and conditions of affiliation shows that the institute should adopt the standards laid down by the National Council for Vocational Training in the matter of syllabi, scale of tools and equipment, shop layouts, methods of training and trade testing in force from time to time. The requisite number of instructional staff and supervisory staff should be provided. They should be qualified and should possess experience for their post. Unless a good salary is paid, the institute will not get competent Teachers. Further, the payment of substantial salary is a sine qua non to get the maximum services from a Teacher.*
>
> *Taking into all these circumstances, I am of the view that this case does call for interference under Article 226 of the Constitution of India. Hence, the Original Petition is dismissed.*
>
> *Petition dismissed."*

6.Again a similar issue was considered by Hon'ble Supreme Court in the case of ***SHIKSHAN PRASARAK MANDAL & ORS.***, reported in ***(2005) 13 SCC 407***. The Hon'ble Supreme Court after taking note of the fact that Maharashtra Employees of Private Schools (conditions of service) Regulation Act, 1977 shall apply to all private schools, the State Government has passed an order directing private institution to pay salary to the teaching staff on par with Government staffs as per fifth pay commission recommendations, in exercise of their power under the Regulation Act,1977 to prescribe the scale of pay of employees of private schools and upheld the judgment of High Court of Bombay by allowing the writ petition filed by the teachers seeking benefit of pay revision as per fifth pay commission recommendations.

7.The learned counsel for the petitioner also relied upon yet another judgment of Hon'ble Supreme Court in Civil Appeal Nos.115 and 116 of 2017 dated 05.01.2017 in the case of ***Secretary Mahatma Gandhi Mission & another -vs- Bhartiya Kamgar Sena & Ors***. Before the Supreme Court a decision of Government (G.R dated 12.08.2009), was constructed as an order made in exercise of the power under Section 8(3) of the Universities Act, which empowers the Government to prescribe the service conditions of teaching staff of the affiliated colleges irrespective of the fact whether they are aided or not. Therefore, all the decisions relied upon by the petitioner are based on orders or policy decision of Government in exercise of their statutory or sovereign power which were held to be binding on unaided private institutions. From the factual background as seen from all the above judgments, this Court is of the view that the judgments relied upon by the petitioners are distinguishable.

8.The learned counsel appearing for the first respondent relied upon the detailed counter affidavit filed by the fifth respondent specifically with reference to the fees collected from the students and the financial issues relating to the administration of the school with the pay structure recommended by the Government. It is also stated that the post in which, the petitioners are engaged, are not sanctioned posts and that they are only the management posts. It is now admitted before this Court that there are 28 teaching and non-teaching staffs working in the institution and out of 28 staffs in the institution, only 6 teaching staffs and 3 non-teaching staff alone are sanctioned and they are getting aid from the Government. It is also pointed out that even the salary for the 9 staffs sactioned are not fully paid by the Government. It is also contended by the first respondent that the expenditure on salary and maintenance is on the increase due to inflation and that the first respondent who has established the institution in rural and backward area, is unable to get exorbitant fees. Audit statement also projects the financial plight of the institution. It is not in dispute that the petitioners in these writ petitions are engaged in self financing courses in the first respondent. The appointment of the petitioners in these writ petitions, are purely contractual and there is no statutory right and hence the petitioners cannot claim any right in parity with the Government employees based on any executive orders of Government. When the institute is unable to meet the expenses, it is not for the petitioners who are posted in the un-sanctioned posts to claim pay as applicable to the Government employees. It is contended by the first respondent that it is impossible to implement the recommendations of the Government or NCVT, due to financial liability.

9.The learned counsel appearing for the first respondent relied upon the judgment of the Hon'ble Supreme Court in the case of ***SATIMBLA SHARMA AND OTHERS -vs- ST. PAUL'S SENIOR SECONDARY SCHOOL AND OTHERS*** reported in ***(2011)8 MLJ 554(SC).***

10.The Hon'ble Supreme Court, in the judgment referred above, had an occasion to deal with a similar claim of school teachers, who are working in unaided minority schools. The Hon'ble Supreme Court, considering the provisions of the Right of Children to Free and Compulsory Education Act 2009, held that the teachers of private unaided minority school are not entitled to claim parity of salary and allowances with that of the Government or Government aided schools teachers. It is pertinent to mention that the Hon'ble Supreme Court in Para No.12 of the judgment has considered the first issue. As per the judgment of the Hon'ble Supreme Court, in the absence of executive instructions issued by the Government requiring private schools to pay the same salary and allowances to their teachers as are being paid to teachers of Government schools or Government aided schools the teachers cannot claim salary on par with Government school teachers. The relevant portion of the judgment is also extracted hereunder:

> *"12.In K.Krishnamacharyulu and Others v. Sri Venkateswara Hindu College of Engineering and Another (supra), relied upon by the learned counsel for the appellants, executive instructions were issued by the Government that the scales of pay of Laboratory Assistants as non-teaching staff of private colleges shall be at par with the government employees and this Court held that even though there were no statutory rules, the Laboratory Assistants as non-teaching staff of private college were entitled to the parity of the pay-scales as per the executive instructions of the Government and the writ jurisdiction of the High Court under Article 226 of the Constitution is wide enough to issue a writ for payment of pay on par with government employees. In the present case, there are no executive instructions issued by the Government requiring private schools to pay the same salary and allowances to their teachers as are bring paid to teachers of Government schools or Government aided schools.*

13.We cannot also issue a mandamus to respondent nos.1 and 2 on the ground that the conditions of provisional affiliation of schools prescribed by the Council for the Indian School Certificate Examinations stipulated in Clause (5)(b) that the salary and allowances and other benefits of the staff of the affiliated school must be comparable to that prescribed by the State Department of Education because such conditions for provisional affiliation are not statutory provisions or executive instructions, which are enforceable in law. Similarly, we cannot issue a mandamus to give effect to the recommendations of the report of Education Commission 1964-66 that the scales of pay of shool teachers belonging to the same category but working under different managements such as government, local bodies or private managements should be the same, unless the recommendations are incorporated in an executive instructions or a statutory provision. We, therefore, affirm the impugned judgment of the Division Bench of the High Court.

14.We, however, find that the 2009 Act has provisions in Section 23 regarding the qualifications for appointment and terms and conditions of service of teachers and sub-Section (3) of Section 23 of the 2009 Act provides that the salary and allowances payable to, and the terms and conditions of service of teachers shall be such as may be prescribed. Section 38 of the 2009 Act empowers the appropriate Government to make rules and Section 318(2)(1) of the 2009 Act provides that the appropriate Government, in particular, may make rules prescribing the salary and allowances payable to, and the terms and conditions of service of teachers, under sub-Section(3) of Section 23. Section 2(a) defines "appropriate Government" as the State Government within whose territory the school is established. The State of Himachal Pradesh, respondent No.3 in this appeal, is thus empowered to make rules under sub-section(3) of Section 23 read with Section 38(2)(1) of the 2009 Act prescribing the salary and allowances payable to, and the terms and conditions of service of teachers. Article 39 (d) of the Constitution provides that the State shall, in particular, directs its policy towards securing that there is equal pay for equal work for both men and women. Respondent No.3 should therefore consider making rules under Section 23 read with Section 38(2)(1) of the 2009 Act prescribing the salary and allowances of teachers keeping in mind Article 39(d) of the Constitution as early as possible."

11.The learned counsel appearing for the respondents 1 & 2 also relied upon the judgment of Full Bench of this Court, dated 15.10.2015 in W.A.No.1307 of 2009 in the case of ***CORRESPONDENT/PRINCIPAL, AROKIAMADA MATRICULATION HIGHER SECONDARY SCHOOL, POLACHI -vs- T.SORUBARANI (DECEASED) AND OTHERS***, reported in ***(2015)8 MLJ 257(FB)***. The relevant portions of the judgment of the Full Bench of this Court are extracted hereunder:

> *"17.Indisputably, the standard of education, the curricular and co-curricular activities available to the students and various other factors are matters which are relevant for determining of the fee structure. It is pertinent to point out that the Matriculation Schools are depending upon the fees paid by the students to meet out the expenditure on the salary of its teaching and non-teaching staff, maintenance of campus, water and electricity charges. To provide good quality of education to the standards, they have got the right to establish and administer their educational institutions and any regulation on pay parity by the unaided schools is impermissible as it infringes the Fundamental Right of the unaided educational institutions whether belonging to minorities or otherwise to practice any profession or to carry on any occupation, trade or business, which is available under Article 19(1)(g) of the Constitution of India. This law imposing the restrictions thereunder cannot be said to be in the interest of general public. Moreover, the Matriculation Schools are not financially supported by the Government. In such circumstances, any direction issued to the Management with regard to fixation of pay on par with the teachers in the Government Schools would only have adverse effect on the quality of education provided by them.*
>
> *18.Again, in T.M.A. Pai Foundation and Others v. State of Karnataka and Others (Supra), in paragraph 54 of the judgment, their Lordships observed as under:-*
>
> > *"The right to establish an educational institution can be regulated; but such regulatory measures must, in general, be to ensure the maintenance of proper academic standards, atmosphere and infrastructure (including qualified staff) and the prevention of mal-administration by those in charge of management, The fixing of a rigid fee structure, dictating the formation and composition of a Government body, compulsory nomination of teachers and staff for appointment or nominating students for admissions would be unacceptable restrictions.*

> *20.Though reliance is placed on Section 16(ii) of Chapter V and 18(ii) of Chapter VI of the Code for pay parity, it is not denied that the Hon'ble Supreme Court had, on more than one occasion, held that the Government cannot regulate the salary structure of the unaided institutions as the same is a matter of contract between the teacher and the school which is outside the domain of public law.*
> *21.There cannot be any rigidity in respect of salary payable to the teachers. Any such stipulation would interfere with the overall administrative control by the Management and would infringe its right to establish and administer the educational institutions."*

12.The Hon'ble Supreme Court has categorically held that there was no statutory provision requiring a private unaided school or institution to pay the same salary as were payable to the Government or aided schools. In the absence of any statutory provisions or orders of Government in exercise of their statutory power, a writ of mandamus cannot be issued to private institutions to pay equal pay and allowances to the teachers of unaided minority schools on par with the salary and allowances of teachers in Government or aided schools.

13.As pointed out earlier, the judgment relied upon by the learned counsel appearing for the petitioners can be distinguished, by referring to the facts that there is no executive or statutory orders issued by the Government either by way of exercising the power under any Statute or issuing directions which are binding on the institutions which are supposed to be recognized or affiliated by government or university under special statutes. When there is a contract of employment governing the payment of salary to the petitioners, the petitioners are not entitled to claim salary on par with the staff of the State Government. This Court cannot force the private unaided minority institutions to surrender their fundamental rights, guaranteed under the Constitution of India.

14.For the reasons stated above, this Court is fully convinced that the petitioners have no right to claim 2/3rd of the pay that is being paid as salary to the staff of the Government I.T.Is as per the recommendations of the NCVT. As a result, these writ petitions are dismissed. No costs.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Ns

Note:In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Joint Director of Employment & Training,
Department of Employment & Training,
Chepauk, Madras-5.

2.The Regional Joint Director,
Department of Employment and Training,
Mannarpuram,
(Govt.Multi-Department Office, 1st Floor)
Trichy.

3.The Director of Employment and Training
Guindy (Near Govt I.T.Ts)
Madras.

+2 CC to M/s.V.JOHN KENNEDY, Advocate (SR-29890, SR-29888 dated 22/09/2021)

+1 CC to The Special Government Pleader (SR-30029 dated 23/09/2021)

W.P.(MD).Nos.1393, 3438 of 2014 and 9913, 9914 of 2013
21.09.2021

SRK(CO)
RS/JC (01.11.2021) 11P 7C