

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/04/2003

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION No.2515 OF 2002
AND
WPMP.NOs.3495 & 17866 OF 2002
and
WVMP.NO.532 OF 2002

1. Mrs.S. Mallika
2. Mrs. Suguna Thiyagarajan
3. R.D.S. Devika
4. D.K.S. Premakumari
5. T. Thamil Selvi
6. X. Mary Juicy Counsala
7. A. Usha Devi
8. S. Malliga
9. V. Vasanthi .. Petitioner

-Vs-

1. Director of School (Matriculation)
Education, College Road,
Chennai 600 006.

2. Inspector of Matriculation Schools,
Chennai 600 006.

3. Madras Secretariat Colony
Matriculation School,
rep. by its President
144, III Street,
Secretariat Colony,
Kilpauk, Chennai 10.

4. Madras Secretariat Co-operative
Building Society,
rep. by its President
144, III Street,
Secretariat Colony,
Kilpauk, Chennai 10. .. Respondents

Petition filed under Article 226 of the Constitution of India for
issuance of a Writ of Mandamus as stated therein.

For Petitioner : Mr.V. Ramajagadeesan

For Respondents 1-2 : Mr.S.P. Prabhakaran, AGP

Respondents 3-4 : Mr.N. Rajan

:J U D G M E N T

The present writ petition has been filed seeking for a writ of mandamus directing the respondents to pay salary to the teachers at par with the salary payable in Government Schools and aided schools.

2. Petitioner No.1 is the Principal and the petitioner No.2 is the Vice Principal and the other petitioners are working as B.Ed. School Assistants in Secretariat Colony Matriculation School (Respondent No.3). The aforesaid school is a recognised school administered by Madras Secretariat Co-operative Building society (Respondent No.4), a society registered under the Tamil Nadu Co-operative Societies Act. It is asserted by the petitioner that the school had earlier implemented the Pay Commission Reports and was paying salary at par with other school teachers employed in Government schools or aided schools. The school had also implemented VI Pay Commission Report from January, 2001 onwards. While the matter stood thus, the third respondent, in one of the loan applications stated old scale of pay as per V Pay Commission would be payable. On the query of the teaching staff, the President of the school informed that the teaching staff will not be paid salary at par with the Government schools or the aided schools as third respondent school was a self financing institution and was not in a position to pay the salary at par with the Government school teachers scale of pay. On these allegations, the petitioners have prayed for a direction regarding payment of salary to the teaching staff at par with the salary payable to the Government school teachers and the aided school teachers.

3. An interim order had been passed while the writ petition was admitted. Subsequently, the respondents 3 & 4 have filed a petition for vacating the order of status quo. A counter affidavit has also been filed on behalf of them. In the counter affidavit it has been indicated that the third respondent school is managed by the fourth respondent Society, which is a co-operative society. It has been pointed out that the society has been instituted for the purpose of self-help and mutual benefit of all its members, for the construction of residential houses and the school was started by the fourth respondent society. It has been indicated that the school cannot look for funds from the fourth respondent society for its maintenance and survival and it has to generate its own funds. It has been further indicated that the Registrar of Co-operative Societies on the basis of the representations made by the petitioner, had passed an order in Na.Ka.2170/2001 /E1 dated 12.6.2001 sanctioning a pay scale of Rs.6500-200-11100 for the principal and Rs.5000-150-8000 for a Vice Principal and other B. T. Assistants. He had further imposed a condition that the said pay scale should not affect the assets of the fourth respondent society and its income from other sources. The Special Officer passed a further resolution stating that

the pay scale fixed for the teachers in Government schools would be paid to the teachers of the third respondent school. It is contended that such resolution by the Special Officer is null and void. It has been further indicated that after the resolution has been passed by the Special Officer, representation has been made on behalf of the Society before the Registrar of Co-operative Societies indicating that the pay scale at par with the Government teachers as per the resolution passed by the Special Officer should not be made applicable in view of the financial condition. It has been further indicated that a society has been formed in the name and style of The Madras Secretariat Colony Educational and Welfare Society, Registration No.152/2001 with a view to taking over the administration of the third respondent school from the fourth respondent society. It has been indicated that no writ petition is maintainable against a Co-operative Society.

4. Learned counsel appearing for the petitioner has placed reliance upon the decision reported in 2000(2) CTC 478 (V. VENKATACHALAPATHY AND FOUR OTHERS v. VELLORE CO-OPERATIVE SURGAR MILLS MATRICULATION SCHOOL REP. BY ITS PRESIDENT AND TWO OTHERS), which has been subsequently followed in judgment dated 14.3.2001 in W.P.Nos.13167 and 13168 of 2000 and contended that the teachers should be paid salary at par with the Government school teachers and aided school teachers. In the reported decision, the learned Judge took note of the fact that as per Regulations 18(ii), scale of pay applicable to the teachers of the Government schools for identical post is applicable. The question of maintainability of a writ petition against a co-operative society was also raised in the said decision. The observation of the Supreme Court in A.I.R 1998 SC 295 (K. KRISHNAMACHARYULU v. SRI VENKATESWARA HINDU COLLEGE OF ENGINEERING) to the following effect

□ It is not in dispute that executive instructions issued by the Government have given them the right to claim the pay scales so as to be on par with the Government employees. The question is: when there is no statutory rules issued in that behalf, and the Institution, at the relevant time, being not in receipt of any grant-in-aid; whether the writ petition under Article 226 of the Constitution is not maintainable? In view of the long line of decision of this court holding that when there is an interest created by the Government in an Institution to impart education which is as fundamental right of the citizens, the teachers who teach the education gets an element of public interest in the performance of their duties. As a consequence, the element of public interest requires to regulate the conditions of service of those employees on par with Government employees. In consequence, are they also not entitled to the parity of the pay scales as per the executive instructions of the Government? It is not also in dispute that all the persons who filed the writ petition along with the appellant had later withdrawn from the writ petition and thereafter the respondent-management paid the salaries on par with the Government employees. since the appellants are insisting upon enforcement of their right through the judicial pressure, they need and seek the protection of law. We are the view that the State has obligation to provide facilities and opportunities to the people to avail of the right to education. The private institutions cater to the needs of the educational opportunities. The teacher duly appointed to a post in the private institution also is entitled to seek enforcement of the

orders issued by the Government. The question is as to which forum one should approach. The High Court has held that the remedy is available under the Industrial Disputes Act. when an element of public interest is created and the institution is catering to that element, the teacher, the arm of the institution is also entitled to avail of the remedy provided under Article 226; the jurisdiction part is very wide. It would be different position, if the remedy is private law remedy. So they cannot be denied the same benefit which is available to others. Accordingly, we hold that the writ petition is maintainable. They are entitled to equal pay so as to be on par with Government employees under Article 39(d) of the Constitution.[]

was relied upon by the learned single Judge to come to a conclusion that a writ can be filed to ensure such payment.

5. Learned counsel appearing for the respondents has however placed reliance upon the Full Bench decision of the Madras High Court reported in 2001(1)L.W. 38 (M. THANIGACHALAM v. MADHURANTHAGAM AGRICULTURAL PRODUCERS CO-OPERATIVE MARKETING SOCIETY LTD. AND OTHERS) and submitted that the writ petition against a co-operative society is not maintainable.

6. A careful perusal of the aforesaid decision makes it clear that while as a general rule, a writ petition against a co-operative society as such may not be maintainable, under certain exceptional cases, a writ would be maintainable. One of the exceptions seems to be the prayer relating to mandamus for enforcing a public duty. In my opinion, the position seems to be concluded by the Supreme Court in AIR 1998 SC 295.

7. The contention of the learned counsel for the petitioner to the effect that the aforesaid decision of the Supreme Court is not in conformity with the long line of cases rendered by the Supreme Court holding that the writ petition is not maintainable against a cooperative society, should not be followed.

8. Learned counsel for the respondents has relied upon the decision reported in AIR 1971 SC 1920 (KUMARI REGINA v. ST. ALOYSIUS HIGHER ELEMENTARY SCHOOL AND ANOTHER) and AIR 1976 SC 888 (EXECUTIVE COMMITTEE OF VAISH DEGREE COLLEGE, SHAMLI AND OTHERS v. LAKSHMI NASRAIN AND OTHERS) and AIR 1993 SC 2178 (UNNIKRISHNAN, J.P. AND OTHERS ETC. ETC. v. STATE OF ANDHRA PRADESH AND OTHERS ETC.ETC.) wherein it has been held that private unaided school education is not an instrumental or organ of the State and therefore not maintainable to its jurisdiction.

9. A perusal of the aforesaid decisions indicate that the questions raised related to the question of dismissal from service. In none of the cases, there was an element or question of enforcing any public duty. On the other hand as observed by the Supreme Court in AIR 19 98 SC 295 (cited supra), there is a public duty to treat the teachers of the unaided school at par with the Government schools or aided schools. The effect of such decision, which has been followed in 2000(II) CTC 478 (cited supra), has not been diluted by the Full Bench decision reported in 2000(1) LW 38 in any manner.

10. It is the contention of the respondents that the code for matriculation school is merely an administrative instruction and on the basis of such instructions it cannot be said that there is no statutory obligation. This question is again covered by the decision reported in A.I.R.1998 SC 295 (cited supra) where the Supreme Court has said that such unaided private school education has to pay salary at par with the Government teachers on the basis of the executive instructions.

11. The learned counsel for Respondents 3 and 4 in course of hearing had expressed the apprehension that the Respondents would not be in a position to gather necessary finance to pay the staff. This is a matter to be considered by the Government. Since the school is run for the benefit of Government Servants the possibility of extending financial assistance from time to time or granting aid may be considered sympathetically.

12. For the aforesaid reasons, the writ petition is allowed. The amount payable till end of June, 2003 should be paid by the end of December, 2003 and the amount payable from the month of July should be paid as per normal schedule. No costs.

Index : Yes

Internet : Yes

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To

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