

(2009) 09 MAD CK 0071

In the Madras High Court

Case No : Writ Petition No's. 8666 and 8670 of 2005

R. Saravanakumar and V.K. Sattanathan

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 03-09-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 39

Citation : (2009) 8 MLJ 1088 : (2010) 3 SLR 40

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : R. Saravanakumar, for the Appellant; A. Suresh, Government Advocate R1 to R3, for the Respondent

Final Decision : Dismissed

Judgement

V. Dhanapalan, J.—The petitioners have come forward with these Writ Petitions praying for a direction to the respondents to fix their scale

of pay on par with P.G. Teachers based on the principle of "equal pay for equal work".

2. According to the petitioners, Higher Secondary Education was introduced in the year 1978 and it consists of two categories namely General

stream and Vocational stream. In the General stream, the Higher Secondary Education comprises of Maths Group, Science Group and Arts

Group and the Vocational stream of education comprises of six areas viz. Commerce and Business, Engineering and Technology, Agriculture,

Home Science, Health and Miscellaneous. The minimum educational qualification prescribed for General stream is a Post Graduate degree in the

subject concerned and a Bachelor degree in Education (B.Ed.). The further case of the petitioners is that the Government has issued G.O.Ms. No.

1719 dated 14.9.1978, prescribing qualification for appointment of Vocational Instructors and also sanctioned the appointment to teach the

students of above mentioned Vocational groups. It is also stated that for Commerce and Business Group, the Government prescribed Commerce

degree as the qualification for the Vocational stream.

3. While that being so, at the time of introduction of Higher Secondary system, due to non-availability of required number of P.G. Teachers, the

B.T. Assistants who were working in the Secondary Schools were inducted to teach subjects in the General Stream. Thereafter, those inducted

Teachers were asked to undergo a part-time training course conducted by SCERT and they were also awarded Certificates and they were treated

as equivalent to P.G. Assistants, whereas the Vocational Instructors who were initially appointed on part-time basis and they were not regularised.

Thereafter, considering the representations submitted by the petitioners, the Government had taken a decision and about 800 Vocational Teachers

were brought in the time scale of pay as per G.O. No. 712 dated 28.5.1990 and subsequently, 587 Vocational Teachers were also brought in

time scale of pay vide G.O. 967 dated 16.10.1992.

4. The petitioners who are also similarly placed Vocational Teachers, possessed with M.Com., degree with B.Ed., qualifications, initially appointed

on 21.09.1984 and 16.8.1985 respectively, were given time scale of pay as per G.O. No. 967 dated 16.10.1992 and they are now working

under the fourth respondent School, handling Commerce, Accountancy, Auditing and Management Principles and Techniques for the Vocational

Group. The petitioners claim that the syllabus for the subjects namely Commerce, Accountancy etc. are almost similar for both the students of

General stream and Vocational stream. Further, the Vocational Teachers are required to take practical classes, maintenance and correction of

records of the students in addition to theory classes. The fact that the Vocational Teachers are also having Masters Degree with B.Ed.,

qualifications and are handling classes in equal number of classes on par with that of the P.G. Assistants in the Schools was also noticed by the

Government.

5. On the basis of the above similarities and the nature of work, the petitioners claim for fixation of equal pay on par with that of P.G. Teachers

based on the principle of equal pay for equal work. It is also stated that the P.G. Teachers are given the scale of pay of Rs. 6,500-200-10500 for

handling classes for Commerce and Accountancy groups for the Higher Secondary Students and for the Vocational Teachers who are also

handling classes for the Higher Secondary Students in Commerce, Accountancy, Auditing, Office Management are given only the scale of pay of

Rs. 5,500-175-9000/-. Therefore, the petitioners claim that they are also entitled to have the equal pay as that of the P.G. Assistants based on the

principles enshrined under Articles, 14, 15 and 39(d) of the Constitution of India.

6. The third respondent has filed a common counter affidavit inter alia contending that the petitioners have produced details about the creation of

Vocational courses in Government Higher Secondary Schools and engagement of Vocational Teachers as single part time and double part time

teachers in various Government Orders and thereafter creation of Vocational Instructor posts in the Higher Secondary Schools in the pay scale of

Rs. 1400-40-1600-50-2300-60-2600 (equivalent to B.T. scale) and hence it would be clear that the petitioners were aware of the fact that they

were entitled only for the scale applicable to B.T. Assistants as per G.O.Ms. No. 6869 School Education dated 20.3.2007, the prayer in these

Writ Petitions that they should be given the pay scale of P.G. Assistants, is entirely different from that of Vocational Instructors. As per the Adhoc

Rules, the qualification prescribed for Vocational Teacher is only diploma-degree holders, whereas a P.G.Assistant must possess a Master degree

in the relevant subject with B.Ed., degree and according to G.O.Ms. No. 720 Education dated 28.4.1981, the Government have prescribed the

educational qualifications for the Post Graduate Teachers handling Higher Secondary classes as Post Graduate degree with B.Ed. Further, P.G.

Assistant Post in Higher Secondary or Government High Schools or by direct recruitment selected by the Teachers Recruitment Board, after

various selection process. Hence, for the post of P.G. Teachers, a post graduate degree and B.Ed., degree qualifications are compulsory,

whereas, the qualification prescribed for Vocational Teachers is only a Technical Qualification, a degree or diploma in the relevant subject (B.Sc.,

Computer Science/B.Com. Or B.Sc.,) (Agri) without B.Ed. Degree.

7. In the counter, it is also stated that the implementation of the order of this

Court in W.P. No. 19904 of 1999 filed by the Government of

Pondicherry and the subsequent orders stated to have been passed by the Government of Pondicherry in their G.O.Ms. No. 79 Chief Secretariat

(Education) dated 10.7.2006 revising the pay scale of Vocational Instructors working in Pondicherry Government Schools from Rs. 5500-9000/-

to 6500 - 10500/- was the policy matter of that Government and that would not have any binding effect on the Government Tamil Nadu.

8. As regards two third of the Vocational Instructors possess Post Graduation Certificate, it has no credential value to the relief sought for, since

they do not possess B.Ed., qualification. Further, possessing qualification alone is not a criteria, since the nature of work discharged are entirely

different. Therefore, the revision of pay scale of Vocational Instructors on par with Higher Secondary Teachers will cost huge expenditure to the

Government Exchequer and the revision will attract other teachers such as Secondary Grade Assistant and B.T. Assistants with Post Graduate

qualification for the same relief as on Vocational Instructors. Further, the Vocational Instructors have been paid in the pay scale of Rs. 5,500-

9000/- which is equivalent to the B.T. Assistant scale from their initial appointment on consolidated pay and their demand of Higher Secondary

Post Graduate Teachers pay scale of Rs. 6,500 - 10,500 is not at all justified. Therefore, they prayed for dismissal of the Writ Petitions.

9. The learned Counsel for the petitioners strenuously contended that the nature of work, duties and responsibilities of the Vocational Instructors

are almost equal to that of Post Graduate Teachers and the Vocational Instructors are also handling Higher Secondary Classes. The learned

Counsel would further contend that most of the Vocational Instructors are having Post Graduate degrees and in the instant case, the petitioners are

also having M.Com., with B.Ed., degrees and therefore, there cannot be any discrimination on the pay scale of the petitioners and they are entitled

for the same pay scale on par with that of the P.G. Assistant Teachers. The learned Counsel for the petitioners also relied on the decision of this

Court in W.P. No. 19904 of 1999 in support of the claim of the petitioners in a similar circumstances.

10. On the other hand, the learned Government Advocate appearing for the respondents would contend that the educational qualifications for the

P.G. Assistant Teachers and the Vocational Instructors are entirely different and as per Rules, the qualification prescribed for the Vocational

Teachers is only a diploma-degree holder, whereas for the P.G. Teachers, they must possess a Master Degree in relevant subject with B.Ed.,

degree qualifications. Therefore, they cannot be compared with the Post Graduate Assistant Teachers for claim of equal pay for equal work. The

learned Government Advocate has also produced the decision of the learned single Judge of this Court in W.P. No. 19224 of 1998 dated

23.3.2009, by distinguishing the above decision to the facts of this case.

11. I have heard the submissions made by Mr. R. Saravanakumar, learned Counsel appearing for the petitioners, Mr. A. Suresh, learned

Government Advocate appearing for the respondents and also perused the materials available on record and also the decisions relied on by them.

12. It is not in dispute that the petitioners are working as Vocational Instructors and they are possessed with M.Com., and B.Ed., degrees. The

petitioners have also traced about the systems introduced by the Education Department for bringing Higher Secondary in the State of Tamil Nadu

by introducing two streams namely the General Stream and Vocational stream and referred to the Government Orders in fixing the pay scale as

well as the qualifications as referred above in the pleadings of the respective parties. Further, as stated above, the qualifications prescribed for the

P.G. Teachers is Post Graduate Degree with B.Ed., qualification, whereas for the Vocational Teachers, the educational qualification is that they

must possess a diploma-degree of the subject concerned. The nature of work as seen from the various materials would show that the Vocational

Teachers are handing classes in their respective subjects for the Higher Secondary Classes and also doing the valuation work. It is further claimed

by the petitioners that the syllabus and the examination pattern are also common and the valuations being done by the petitioners are also on par

with P.G. Assistant Teachers.

13. However, this has been controverted to by the respondents by stating that the possession of educational qualifications alone is not a criteria,

since the nature of work discharged is entirely different and therefore, when the qualifications and the nature of work are different, the scale of pay

as claimed by the petitioners cannot be granted. Further, the respondents have

also made it clear that the decision of this Court in respect of revision of pay scale which was implemented by the Government of Pondicherry, was the Policy matter of that Government and that would not have any binding effect on this Government.

14. In such circumstances, in W.P. No. 19224 of 1998 dated 23.3.2009, the petitioners, who were the Teachers working in the High Schools with diversified courses with subjects like Engineering, Commerce, Agriculture and Home science, were allowed to be utilised as Vocational Teachers, following the ratio laid down by the Honble Supreme Court in the case of S.C. Chandra and Others Vs. State of Jharkhand and Others, page 279, wherein the Hon''ble Mr. Justice M. Katju, 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., Surinder Singh v. Engineer-in-Chief, CPWD, Randhir Singh v. Union of India, etc. This was done by applying Articles 14 and 39(d)

of the Constitution. Thus, in Dhirendra Chamoli case 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 Singh* 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*.

Para 34. There is broad separation of powers under the Constitution, and the judiciary should not ordinarily encroach into the executive or

legislative domain. The theory of separation of powers, first propounded by the French philosopher Montesquieu in his book *The Spirit of Laws*

still broadly holds the field in India today. Thus, in *Asif Hameed v. State of J&K* a three-Judge Bench of this Court observed (vide paras 17 to

19): (SCC pp. 373-74)

17. Before advertng to the controversy directly involved in these appeals we may have a fresh look at the inter se functioning of the three organs of

democracy under our Constitution. Although the doctrine of separation of powers has not been recognised under the Constitution in its absolute

rigidity but the Constitution makers have meticulously defined the functions of various organs of the State. Legislature, executive and judiciary have to function within their own spheres demarcated under the Constitution. No organ can usurp the functions assigned to another. The Constitution trusts to the judgment of these organs to function and exercise their discretion by strictly following the procedure prescribed therein. The functioning of democracy depends upon the strength and independence of each of its organs. Legislature and executive, the two facets of people's will, they have all the powers including that of finance. Judiciary has no power over sword or the purse nonetheless it has power to ensure that the aforesaid two main organs of State function within the constitutional limits. It is the sentinel of democracy. Judicial review is a powerful weapon to restrain unconstitutional exercise of power by the legislature and executive. The expanding horizon of judicial review has taken in its fold the concept of social and economic justice. While exercise of powers by the legislature and executive is subject to judicial restraint, the only check on our own exercise of power is the self-imposed discipline of judicial restraint.

18. Frankfurter, J. of the U.S. Supreme Court dissenting in the controversial expatriation case of *Trop v. Dulles* observed as under: (US pp.119-20)

All power is, in Madison's phrase, "of an encroaching nature". ... Judicial power is not immune against this human weakness. It also must be on guard against encroaching beyond its proper bounds, and not the less so since the only restraint upon it is self-restraint. ...

Rigorous observance of the difference between limits of power and wise exercise of power-between questions of authority and questions of

prudence-requires the most alert appreciation of this decisive but subtle relationship of two concepts that too easily coalesce. No less does it

require a disciplined will to adhere to the difference. It is not easy to stand aloof and allow want of wisdom to prevail, to disregard one's own

strongly held view of what is wise in the conduct of affairs. But it is not the business of this Court to pronounce policy. It must observe a fastidious

regard for limitations on its own power, and this precludes the Court's giving effect to its own notions of what is wise or politic. That self-restraint

is of the essence in the observance of the judicial oath, for the Constitution has

not authorised the judges to sit in judgment on the wisdom of what Congress and the Executive Branch do.

19. When a State action is challenged, the function of the court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the Constitution and if not, the court must strike down the action. While doing so the court must remain within its self-imposed limits. The court sits in judgment on the action of a coordinate branch of the Government. While exercising power of judicial review of administrative action, the court is not an appellate authority. The Constitution does not permit the court to direct or advise the executive in matters of policy or to sermonise qua any matter which under the Constitution lies within the sphere of legislature or executive, provided these authorities do not transgress their constitutional limits or statutory powers.

Para 35. In our opinion fixing pay scales by courts by applying the principle of equal pay for equal work upsets the high constitutional principle of separation of powers between the three organs of the State. Realising this, this Court has in recent years avoided applying the principle of equal pay for equal work, unless there is complete and wholesale identity between the two groups (and there too the matter should be sent for examination by an Expert Committee appointed by the Government instead of the court itself granting higher pay).

(emphasis supplied)

15. The above said decision is binding on this Court, as the claim of the petitioners is almost equal in nature. It is also made clear therein that the principle of equal pay for equal work has to be applied in the light of the principles enshrined in Article 39(d) of the Constitution of India.

However, the Supreme Court has laid down that fixation of pay scales by Court by applying the principle of equal pay for equal work will upset

the high Constitutional principle of separation of powers between three organs of the State namely the Legislature, Executive and Judiciary.

Therefore, the claim of the principle of equal pay for equal work, unless there is complete and wholesale identity between the two groups and the

matter should be sent for examination by an Expert Committee appointed by the Government instead of the Court itself granting higher pay, cannot

be encouraged. Therefore, in the light of the above decision, the domain of deciding the equal pay for equal work vests with the appropriate

Government when there is an identity, by examining the issue in detail.

16. Therefore, I am of the considered opinion that when judicial decision binds me to follow the ratio laid down by the Supreme Court as well as

this Court, the claim of the petitioners for a direction on the respondents to grant the equal pay for equal work cannot be granted by this Court in

these Writ Petitions and it is to be done by the appropriate government.

17. In the light of the above, the Writ Petitions are liable to be dismissed. However, a direction is issued to the petitioners to approach the

respondent Government by making a detailed representation indicating the above factors and the decisions cited supra and on receipt of such

representation, the respondent Government may consider the same in the light of the above factors and in accordance with law and pass

appropriate orders as expeditiously as possible.

18. The Writ Petitions are dismissed with the above directions. No costs.