
(1993) 10 MAD CK 0040
In the Madras High Court

T. Rajagopalan

APPELLANT

Vs

State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 25-10-1993

Acts Referred:

Citation : (1994) 1 MLJ 160

Hon'ble Judges : Srinivasan, J

Bench : Division Bench

Judgement

Srinivasan, J.—The writ petitioner passed intermediate with Agriculture as subject at Annamalai University. He was working for two years in a temporary post as Agricultural Instructor at Thirupporraithurai Vivekananda High School. He was appointed temporarily by order dated 10.2.1960 at Thavasumuthu Nadar High School, Porayar. Subsequently, he was appointed permanently by an order dated 30.5.1960 in the scale of pay of Rs. 75-5- 125-10-175. The school is an approved and aided school. By order dated 22.10.1968 in G.O.Ms. No. 1645, Education Department, the State of Tamil Nadu issued ad hoc rules for the holders of permanent post as well as temporary posts under the Madras Educational Subordinate Service. The rules were made with retrospective effect from 7.4.1948. One of the posts covered under the rules was the post of Instructor for Agriculture. The qualifications for the post of Instructor for Agriculture are B.A. (Agriculture) or B.Sc. (Agriculture) as well as pass in the Intermediate Examination of the Madras or Annamalai University under the Old Regulations with Agriculture as subject. The Scale of pay was before 1.6.1960 Rs. 75-5-125-10-175 and from 1.6.1960 it was Rs. 140-5-180-10-250.

2. The order of the Government was given effect only with respect to the Government Schools usually known as "A" wing schools. It should be mentioned at this stage that the schools which were conducted by the District Boards and taken over later by the Government are known as "B" wing schools. In so far as the petitioner is concerned, he does not belong to either category and the school in which he is working is an aided school.

3. When the First Pay Commission revised the scales of pay for Agricultural Instructors from 1.6.1960 the scales were equalised with regard to "A" wing and "B" wing schools. The petitioner also got the benefit thereof. But subsequently when the pay scale was revised under G.O.Ms.No.1645, Education, dated 22.10.1968 with effect from 1.6.1960, the revision was given effect only with regard to "A" wing schools but not given effect with regard to "B" wing or aided schools. Similarly "B" wing schools were left out when the second pay commission recommended to revise the scale of pay. In 1971, amendments were brought in by G.O.Ms. No. 1457, Finance (Pay Commission) under which the scale of pay was revised for "B" wing schools and aided schools from 2.10.1970 to Rs. 250-10-400. It should be noted that even at that stage, the pay scale was lesser than the pay scale for "A" wing schools. When the pay structure was revised again in 1972 for "A" wing schools, other schools were left out. Selection Grade was introduced from 1.4.1973 at the scale of Rs. 400-15-430-20-550-25-650. But that was given effect with regard to "A" wing schools. With reference to "B" wing and Aided Schools, Selection Grade was given only from 1.4.1975 at the scale of pay of Rs. 300-15-420-20-500. When the Third pay commission recommended the revision of pay scales from 1.4.1978 the scale of pay for "A" wing school became Rs. 500-30-750- 35-890-40-1050. But with regard to "B" wing and Aided Schools, it was only Rs. 450-20-590-25-740-30-800.

4. Thus after 1.6.1960, the petitioner and the teachers in the "B" wing schools and aided schools were ignored while the increments and the revision of scales of pay were being given to the staff of "A" wing schools.

5. The petitioner has also stated in the affidavit that with regard to other posts like pandits and other Language Teachers, the first respondent standardised the scale of pay for all the schools belonging to the three wings. Similarly, with respect to other teachers also uniformity has been brought out with regard to pay scales. But Agriculture Instructors who has passed Intermediate qualifications with Agriculture as subject have not had the benefit of revised scales of pay. It is stated in the affidavit that hardly 10 in number in the whole of State of Tamil Nadu have such qualified Agricultural Instructors.

6. It is further averred in the affidavit that one Thiru Crystyl John who had possessed Intermediate with Agriculture as subject and who was holding the post of Instructor in Agriculture in the Government Higher Secondary School, Bhoothapandi, K.K. District was given the benefit of revised scale of pay as prescribed in G.O.Ms. No. 1645, Education, dated 22.10.1968 and subsequent revision in the pay scales were also given to him. But, on a representation made by people like the petitioner, the Government chose to reduce it and equalise it with that of "B" wing schools, but later the Government restored the higher scale of pay for the said person.

7. On the above averments, the petitioner has prayed for issue of a writ of mandamus directing the respondents herein to fix the scale of pay of the

petitioner in the range Rs. 600-30-750- 35-890-40-1050.

8. Learned Counsel for the petitioner urges that the duties of Agricultural Instructor in the schools belonging to all the three wings are the same and there should be parity in the scales of pay. Even in the case of person who has had the same qualification as that of the petitioner, he has been given a higher scale of pay just because he is working in the Government School which belongs to "A" wing. It is therefore contended by learned Counsel that the petitioner is discriminated and such discrimination is unconstitutional and violates the provisions of Article 14 of the Constitution. It is then contended that as per the new rules which came into force in December 1974, the qualifications for Agricultural Instructors are prescribed as B.Sc. Agriculture, B.A. or B.Sc. with Agriculture as a subject in a degree course or B.Sc. with Agriculture as a subject in the intermediate or B.A. or B.Sc. (Botany or Zoology) with Higher Grade Certificate in Agriculture. If persons possessing the qualifications prescribed above are not available any of the qualification specified therein may be deemed as sufficient. The said qualification are licentiate in Agriculture (Mysore) or S.S.L.C. eligible or completed with Agriculture Higher Grade and T.T.C. in Agriculture or S.S.L.C. eligible or completed with Agriculture under the diversified course (from 1976). It is submitted by learned Counsel that the petitioner is having a higher qualification than S.S.L.C. as he has passed Intermediate with Agriculture as subject. Thus even in the present rules, if graduates are not available, the petitioner will be eligible for appointment. In the present case, however, the petitioner has been in service even before the new rules as well as the new act came into force. The Act came into force on 1.12.1974. Section 20 of the Act reads thus:

(I) Appointment of teachers and other employees in private Schools : (1) No person who does not possess the qualifications prescribed u/s 19 shall on or after the date of the commencement of this Act, be employed as teacher or other employee in any private school.

(2) Nothing contained in this section or any rule made thereunder shall apply to any person who, on or before the date of the commencement of this Act, is employed as teacher or other employee in any private school.

9. As per the said provision, the rules or provisions of the Act will not affect any person who is already in service as a teacher. The petitioner having been a teacher even before the Act came into force is undoubtedly qualified under the old rules and he will not be affected by the new rules prescribing higher qualifications. In the circumstances, he should have been treated on par with graduates and the same scales of pay should have been fixed.

10. It is pointed out by learned Counsel for the petitioner that the school in which he is working is getting 100% aid from the Government and on that footing also it should be treated on the same lines as the Government Schools and the teachers should be paid the same scales of pay.

11. Finally learned Counsel relies upon the fact that with regard to all the other courses like pandits and other language teachers uniformity in scales of pay has been already fixed by the Government. Learned Counsel places reliance on the judgment of the Supreme Court in *Haryana State Adhyapak Sangh and Others Vs. State of Haryana and Others*, . The petitioners in that case are teachers employed in various recognised aided private schools in the State of Haryana. The Schools are maintained under private management which receive financial aid from the State Government. The complaint by the petitioners is that they should get their pay on the same scales as the teachers who are employed in Government Schools. They also claimed that all other emoluments such as Dearness Allowance, House Rent allowance, City compensatory allowance, etc. should be paid to them on the same basis. The said contention was accepted by the Supreme Court. The court said,

In our opinion, the teachers of aided schools must be paid the same pay scale and Dearness Allowance as teachers in Government Schools for the entire period claimed by the petitioners, and that the expenditure on that account should be apportioned between the State and the Management in the same proportion in which they share the burden of the existing emoluments of the teachers.

12. Learned Special Government Pleader urges that the schools in the "B" wing shall not be treated on par with the "A" wing schools. According to him, the teachers in the said schools were absorbed by the Government only in 1970 or 1978 and they cannot get the same scales of pay as the teachers in "A" wing schools. It is also contended by him that aided schools cannot be treated on the same footing as "A" wing schools and the discrimination is a valid one as it is based upon a reasonable classification. It Should be pointed out that the respondents have not filed any counter affidavit in this matter though this petition has been pending from 1985. I am not able to accept the contentions put forward by the Special Government Pleader. The ruling of the Supreme Court will squarely apply to this case. There is no basis whatever to contend that the teachers employed in "B" wing or aided schools will stand on a different footing from the teachers employed in "A" wing schools. The work done by the Agricultural Instructors in Government schools is the same as the work done by the agricultural Instructors in other schools. The principle of parity of equal pay for equal work will undoubtedly apply to this case as the Supreme Court has pointed out that there should be no discrimination between the teachers who are doing the same kind of work in different schools. Hence, the petitioner is entitled to have same pay scales as applicable to the teachers in "A" wing schools.

13. The Special Government Pleader makes a statement that from 1.10. 1984 the Fourth Pay Commission fixed a scale of pay with reference to B.Sc. (Agriculture) Graduates at Rs. 905-1545 in all schools and with regard to others, it fixed at Rs. 780-1385. But even according to his own statement, private schools were left out in that pay commission report. It is stated that by one Man Commission, the scales were revised and equalised from 1.4.1986 with regard to

those schools also. It is also submitted that the difference in pay prior to that date between non-graduates and graduates was only Rs. 50 per mensem. But, learned Counsel for the petitioner disputes the correctness of the statement and also submits that there is no warrant for making a distinction between B.Sc. (Agriculture) graduates and the Agricultural Instructors who have got other qualifications. In the circumstances of the case, I am unable to act upon the statement made by the Special Government Pleader. If the Government has already paid salary to the petitioner on a basis equal to that of others, it is open to the Government to bring it to the notice of the petitioner. When the orders of fixation of scale of pay are passed pursuant to my directions in these writ petitions, it will also be open to the petitioner to challenge the same, if he is aggrieved thereby.

14. In the circumstances, I accept the contentions of the petitioner and hold that he will be entitled to have the scales of pay fixed at Rs. 600-30-750-35-890-40-1050. The Third Pay Commission recommended that scale of pay for teachers in "A" wing schools with effect from 1.4.1978. The petitioner will also be entitled to the same scales of pay from that date viz., 1.4.1978.

15. The respondents shall work out the arrears of pay due to the petitioner on that basis and pay the same to the petitioner within four months from this date. The writ petition is ordered in the above terms. In the circumstances of the case, there will be no order as to costs.