

(1999) 08 MAD CK 0079

In the Madras High Court

Case No : Writ Petition No"s. 19116 to 19120 of 1997

V. Venkatachalapathy and four others

APPELLANT

Vs

Vellore Co-operative Sugar Mills Matriculation School and two others

RESPONDENT

Date of Decision : 13-08-1999

Acts Referred:

Constitution of India, 1950 — Article 226, 30, 39

Citation : (2000) 2 CTC 478 : (2000) 2 LW 486

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Advocate : Mr. S.N. Ravichandran, for the Appellant; Mr. Vijay Narayanan, Mr. N. Subramani, Government Advocate, for the Respondent

Judgement

1. In this five writ petitions the common question that arises for consideration being, whether the petitioners are entitled to the relief of mandamus

directing the first respondent to pay the regular basic scale of pay with Dearness Allowance and other attendant benefits at the rate fixed for the

Matriculation Schools?

2. With the consent of counsel for the petitioners and the respondents the writ petitions as well as the Writ Miscellaneous Petitions were taken up

for final disposal.

3. Heard Mr.S.N.Ravichandran, learned counsel, for the petitioners in all the writ petitions. Mr.Vijay Narayan, learned counsel appearing for the

first respondent in all the writ petitioner and the Government Advocate (Education) for the either respondents.

4. The petitioners in all the writ petitions are employed in the first respondent school. The first respondent school has been established by the

Vellore Cooperative Sugar Mills to cater the educational needs of the children of their staff, workers and other persons working in the Sugar Mills.

It is also admitted that the said school is a Matriculation School established according to the Code of Regulations framed for Matriculation

Schools. The petitioners in all the writ petitions were appointed on different dates. All the petitioners are qualified to hold the post against which

they have been appointed. The petitioners were appointed initially on a consolidated pay and the said consolidated pay has been increased

marginally.

5. According to the petitioners they are eligible for the scale of pay of B.T. Assistants equivalent to the B.T. Grade Assistants employed in the

Tamil Nadu Educational service. But the first respondent has been paying only a consolidated salary which is far less than scale of pay, which the

petitioners are entitled to. It is contended by the petitioners that the first respondent had undertaken to pay salary on par with the scale of pay

prescribed by the State Government to the cadre of B.T. Assistants and others Teachers. Despite demands, the respondent had declined to revise

the scales of pay and pay the current scales of pay. The first respondent had ignored the directions issued by other respondents.

6. The first respondent having undertaken to pay the scales had deliberately failed to implement the same. Even at the time of granting of

recognition, the authorities have imposed a condition that the first respondent shall implement the scale of pay as fixed by the State Government in

all the Matriculation Schools from time to time. The regulations framed by the State Government with respect to the Matriculation Schools are

relied upon by the petitioners in support of their contention that this first respondent is bound to pay the scale of pay as stipulated by the State

Government from time to time and the first respondent had ignored the said Regulations taking advantage of the fact that it is a Co-operative

institution.

7. At the time of hearing, it was argued even a ordinary muster roll worker draws pay more than a B.T Assistant employed in the first respondent

school and there is no justification for the first respondent in continuing to pay consolidated pay without revising and remixing the scales of pay on

par with the scales revised from time to time by the State Government.

8. In the common counter affidavit filed on behalf of the first respondent school, the service particulars of the petitioners have been admitted and

not being controverted. It is also admitted that the school is governed by the provisions of the Tamil Nadu Private Schools (Regulations) Act and

the first respondent has got a right to appoint Teachers and others in the school.

9. According to the first respondent the petitioners have accepted the orders of appointment and the pay scales and therefore they cannot demand

a revised or raise any dispute relating to scales of pay. According to the respondent the petitioners cannot invoke the principles of equal pay for

equal work on the facts and circumstances of the case and there could be no comparison between the Teachers working in private unaided

schools and Teachers working in Government schools.

10. According to the first respondent, the schools are not receiving any grant and it is not possible for the first respondent to pay salary as revised

from time to time by the State Government. If the scales of pay as fixed by the State Government is applied to the respondent school, which is a

self financing institution, the respondent will have to close down the school since it will not be in a position to meet the expenditure for running the

school. If compelled to pay scales churned, it is contended by the respondent that it has to charge Rs.4,000 approximately from every student in

the school which would be too costly for them as the school is located in a rural area. At the time of upgradation of the school to matriculation

school the President of the School had initiated proceedings by which the scales of pay of the teaching staff were revised and such revision has

been accepted by the respective teachers who were employed then. According to the respondents the petitioners are not entitled to the relief

prayed for in these writ petitions.

11. Concedingly at the time of getting recognition while upgrading the School to a Matriculation School the first respondent had undertaken to

implement the Government scales of pay in the first respondent school. Despite such an undertaking and the recognition being subject to such an

undertaking given by the first respondent to implement Government scales of pay, it had not been implemented. From time to time the first

respondent had negatived the requests for revision of pay of scales. There had been demands in this respect, but the first respondent had rejected

the request for no valid reason.

12. Concedingly, as per Regulation 18 (ii) framed in respect of Matriculation schools, the first respondent has to pay the scales of pay to its

Teachers as notified from time to time by the State Government for identical posts in its service. There is no controversy with respect to the

Regulations. It is also conceded that all the other cooperative Sugar Mills in the State have placed the Teachers employed in the Schools

established by them on par with the scales of pay notified by the State Government to pay its teachers.

13. Though the learned counsel for the first respondent contended that these writ petitions are not maintainable in view of the earlier orders of this

court issuing a writ and in view of the fact that the first respondent is a School established by a cooperative society which cater the needs of the

boys and girls in the locality as well as children of the staff employed in the Sugar Mills. The fact that the majority of the shares in the first

respondent still are held by the State Government or other Co-operative Organisations under the control of the State Government and as the Sugar

Mills are being controlled by the Director of Sugar under the direct control of the State Government, such a contention cannot be sustained. Even

in respect of private schools writs have been issued and it is a well settled legal position.

14. The Apex Court in K.Krishnamacharyulu v. Sri Venkateswara Hindu College of Engineering, AIR 1998 SC 295 held that remedy is available

under Art.226 even in respect of a private college and not under Industrial Disputes Act, besides holding that the staff employed in Private School

would be entitled to pay parity with the Government. The Apex Court held thus:-

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 a 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 of 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. This pronouncement squarely applies to the facts of the present case and learned counsel for first respondent is unable to point out any distinction, nor he is in a position to distinguish the same.

15. The Apex Court in *Frank Anthony Public School Employees' Association Vs. Union of India (UOI) and Others*, while considering the provisions of the Delhi School Education Act and the constitutional provisions of Arts. 30(1), 14 held that employees of recognised private school shall not be less than employees of schools run by appropriate authority as it is aimed at safeguarding excellence of institution. The Apex Court also considered the contention of minority school that if they have to pay higher salary and allowance to the members of the staff the institution may

have to close down, and it has been held that such a contention is worthless nothing. In this respect, Chinnappa Reddy, J., as he then was,

speaking for the Bench held thus:-

17. Apart from the learned Judges who constituted the Nine Judge Bench, other learned Judges have also Indicated the same view in the leading

case of the Kerala Education Sill, AIR 1958 SC 956 the Constitution Bench observed that, as then advised, the were prepared to treat the clauses

which were designed to give protection and security to the ill paid teachers who were engaged in rendering service to the nation as permissible

regulations. The observations were no doubt made in connection with the grant of aid to educational institutions but that cannot make any

difference since, aid, as we have seen, cannot be made conditional on the surrender of the right guaranteed by Article 30(1)., In State of Kerala,

etc. Vs. Very Rev. Mother Provincial, etc., , it was said that to a certain extent the State may regulate conditions of employment of teachers. In All

Saints High School, Hyderabad and Others Vs. Government of Andhra Pradesh and Others, , Chandrachud, C.J., expressly stated that for the

maintenance of educational standards of an institution it was necessary to ensure that it was competently staffed and, therefore, conditions of

service prescribing minimum qualifications for the staff, their pay-scales, their entitlement, other benefits of service and the safeguards which must

be observed before they were removed or dismissed from service or their services terminated were permissible measures of a regulatory

character. Kailasam, J., expressed the same view in almost identical language. We, therefore, hold that section 10" of the Delhi Education act

which requires that the scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the

employees of a recognised private school shall not be less then those of the employees of the corresponding status in schools run by the

appropriate authority and which further prescribes the procedure for enforcement of the requirement is a permissible regulation aimed at attracting

competent staff and consequently at the excellence of the educational institution. It is a permissible regulation which in no way detracts from the

fundamental right guaranteed by Art.30(1), to the minority institutions to administer their educational Institutions. Therefore, to the extent that

Section 12 makes Section inapplicable to unaided minority institutions it is clearly discriminatory.

23. He must refer to the submissions of Mr. Frank Anthony regarding the excellence of the institution and the fear that the institution may have to

close down if they have to pay higher scales of salary and allowances to the members of the staff. As we said earlier the excellence of the institution

is largely dependent on the excellence of the teachers and it is no answer to the demand of the teachers for higher salaries to say that in view of the

high reputation enjoyed by the institution for its excellence, it is unnecessary to seek to apply provisions like Section 10 of Anthony Public School.

On the other hand, we should think that the very contribution made by the teachers to earn for the institution the high reputation that it enjoys

should spur the management to adopt at least the same scales of pay the other institutions to which section 10 applies. Regarding the fear

expressed by Shri Frank Anthony that the institution may have to close down we can only hope that the management will do nothing to the nose to

spite the face, merely to "put the teachers in their proper place". The fear expressed by the management here has the same ring as the fear

expressed invariably by the management of every industry that disastrous results would follow which may even lead to the closing down of the

industry if wage scales are revised.

16. It is also pointed out that it is open to the first respondent to collect fees even according to the Regulations and this is recognised and there is

no controversy. Mr. Vijay Narayan, Learned counsel for the respondent while referring to the pronouncement of the Apex Court in State of

Haryana and Others Vs. Ram Atri and Others, wherein the Apex Court had considered the issue as to whether a private school is bound to pay its

teaching staff and other staff on par with their counterparts employed in the Government Schools, contended that the matter has been referred to a

larger Bench. The matter according to Mr. Vijay Narayan is still pending consideration before the Apex Court and not been decided finally. Be that

so, even there is neither reason nor there is justification to pay consolidate pay, which is far less than the pay paid to an unqualified NMR by the

Respondent. The salary that is being paid to the petitioners/teachers works out less than the minimum wages fixed by the State Government for

Artisan, daily wage-earners, nor even a farm servant. This is inhumane, highly arbitrary and shocking the conscience of this Court.

17. In *State of Haryana and others Vs. Rajpal Sharma and others*, a Division Bench of the Apex Court held that Teachers in privately managed

aided schools are also entitled to the same scales of pay and privileges as available to their counterparts in Government schools. In that respect, it

has been held thus:-

The question of parity in pay scales between the teachers of a recognised aided school and the teachers of a government school, as in the present

case, came up for consideration in the case of *Haryana State Adhyapak Sangh v. State of Haryana*. This Court came to the conclusion that the

teachers of aided schools must be paid the same pay scale and dearness allowance as teachers in government schools for the entire period served

by them 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. The aforesaid decision of this court was considered again by a three Judge Bench

in the case of *Haryana State Adhyapnk Sangh v. State of Haryana* and by way of clarifying the earlier decision, this Court observed: (SCC p.310

para 6)

These observations leave no scope for doubt that this Court has directed that the teachers of aided schools must be paid the same scales of pay

and dearness allowance as teachers in government schools and that the said payment must be made for the entire period claimed by the appellants

and the petitioners in these cases.

18. However, according to Mr.Vijay Narayan in *State of Punjab and others Vs. Om Prakash Kaushal and others*, another Division Bench of the

Apex Court had taken a different view and therefore a reference has been made to a larger Bench by the Apex Court in *State of Haryana and*

Others Vs. Ram Atri and Others, .

19. As already pointed out that in the earlier decisions of the Apex Court reported in *Frank Anthony Public School Employees' Association Vs.*

Union of India (UOI) and Others, as well as the *State of Haryana and others Vs. Rajpal Sharma and others*, it has been accepted as the settled

position that parity in pay in respect of recognised aided school and teachers of

Government Schools should be maintained. In the latter decision the question arose being whether the Teachers employed in the private schools are automatically entitled to incentives in the shape of advance increments as provided for the Government Servants for acquiring higher educational qualifications. In that context, the Apex Court held that in the absence of any notification extending the same benefit, there cannot be application of the same principles to the teachers employed in private schools. This is not the case here. Here the petitioners condition is shockingly pathetic and the first respondent had treated them worst than an unqualified NMR worker employed with it.

20. However, this Court is clear in its mind that the writ petitioners who are teachers employed in the first respondent school are entitled to pay parity and they should be paid on par with the teachers employed in the Government, Schools as has been held by the Apex Court in *Frank Anthony Public School Employees" Association Vs. Union of India (UOI) and Others, as well as State of Haryana and others Vs. Rajpal Sharma and others, .* In the light of the said pronouncements, it follows that the petitioner are entitled to the relief prayed for. The plea of delay raised by first respondent cannot be sustained as the petitioners have been agitating their claims at every stage and have taken up the matter at all levels. As the petitioners are not teachers who do not belong to any organised sector of labour, they have been singled out even though other employees in the first respondent Mill been given revision from time to time.

21. It is also to be pointed out that the first respondent is a school established by the Sugar Factory for the benefit of the children of their staff and employees and it is not as if the Sugar Factory is not making profit. All other Sugar Factories in the State in the Co-operative Sector have also established schools and they are paying salary on par with the teachers employed in the Government Schools. This is admitted while the first respondent school alone is paying scale of pay far less. The first respondent as already pointed out had undertaken to pay scales of pay as notified by the State Government in respect of teachers employed in the Government Schools and only subject to the said condition, the school had been upgraded and appointed. They have made such a representation without hesitation and undertaken to pay the teachers on par with the Government

School teachers, it is rather arbitrary and highly illegal on the part of the first respondent to deny the scales of pay. The conduct of the first respondent deserves to be condemned.

22. In the foregoing circumstances all the writ petitions are allowed and the first respondent school is directed to implement the pay scales as

revised from time to time by the State Government for the teachers employed in Government Schools in respect of the writ petitioners herein right

from the date from which the first respondent school been upgraded as a Matriculation School and revised scales of pay as applicable to their

counterparts employed in the Government Schools and pay all the arrears within three months from today. The current salary for the writ

petitioners shall be revised and paid within six weeks from today and all their eligible terminal and pension benefits shall be worked out and paid

accordingly as per the revised scales of pay.

23. The writ petitions are allowed with cost of Rs.1,000 to each of the writ petitioners. Consequently. W.M.P.Nos.29553 to 29556 of 1998 are

closed.