

(2008) 04 MAD CK 0179

Madras High Court

Case No: W.A. No's. 2424 to 2428 of 1999, 1309 of 2000, 764 and 765 of 2001 and 1962 of 2005 and W.P. No. 10008 of 2004

The Special Officer,
Salem Co-operative
Sugar Mills,
Matriculation Higher
Secondary School

APPELLANT

Vs

All Teachers Front

RESPONDENT

Date of Decision: April 28, 2008

Acts Referred:

- Constitution of India, 1950 - Article 13(1), 226, 39
- Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 - Rule 16, 18

Citation: (2008) 04 MAD CK 0179

Hon'ble Judges: S. Palanivelu, J; Elipe Dharma Rao, J

Bench: Division Bench

Advocate: G. Thilagavathi, Vijay Narayen for R. Parthiban, in W.A. Nos. 2424 to 2428 of 1999, Sivam Sivanandraj, in W.A. No. 1309 of 2000 and V. Parthiban, in W.A. Nos. 764 and 765 of 2001, for the Appellant; V. Prakash for R. Nalliappan, for R-1 and for R-3 in W.P. No. 10008 of 2004, Dhatchayani, G.A. (E) for R-2 and R-3 and for R-1 and R-2 in W.A. Nos. 2424 to 2428 of 1999 and W.P. No. 10008 of 2004, S.N. Ravichandran, for R-3 in all the writ appeals, D. Devadass, for R-1 in W.A. No. 1309 of 2000 and M. Sureshmumar, for R-1 in W.A. Nos. 764 and 765 of 2001, for the Respondent

Final Decision: Dismissed

Judgement

S. Palanivelu, J.

Since the facts and circumstances of the cases referred to above and the disputes to be settled are identical in nature, this common judgment is rendered.

2. For the sake of convenience, the contentions of all the parties to these proceedings could be summarised as follows, referring them as Writ Petitioners, School Managements and State Government.

3. The gist of bottom-line contentions of the writ Petitioners (except W.P. No. 10008 of 2004) are as follows:

The teachers who are working in different schools, managed by various managements, are entitled to get pay equal to the one which is being drawn by their counterparts serving in the schools managed by the State Government. It is stated that their legitimate entitlements are being denied and when they questioned, their voices as to their rights were discouraged. Even though they have been working under the management schools which do not get any aid from the State Government, their rights are not at all circumscribed, on the plea that the said schools are in economically backward areas and that they are running the schools from the only source, that is to say, collecting fees from the students who hail from poor families.

4. Once the managements shoulder the responsibility of imparting education, they have to carry out the same, in accordance with the rules and regulations framed therefor. Accepting and expecting such of those contingencies alone, they have to start the school. The financial crunch cannot constitute a valid ground for denying a reasonable and justifiable salary to the teachers on par with all Government teachers. In cases of schools run by the Co-operative Sugar Mills in Salem and Vellore, they justify their stand by assigning reasons that they sustained loss for the past very many years and hence the teaching and non-teaching staff could not be paid on par with the Government teachers. But, when the mill earns profit, they are least bothered about the teachers and non-teaching staff. As for these schools, which are run without aid, the Government have prescribed the fees to be collected from the students and paid to the teachers. As far as the schools run by the said Mills are concerned, whether it earns profit or incurs loss, it does not matter. They pay attractive salary to their officers working under them.

5. Once if they feel that the teachers cannot be paid on par with the Government teachers, they have to take steps to hand over the school to the Government in the interest of the students and teachers and in such eventuality, the Government will take care of both the categories. It is the verdict of the Apex Court that the recognised institutions must pay salary to the teachers on par with other Government teachers. The higher administrative authorities of the schools, who are appointed and constituted under the public law, should ensure that the provisions of the Code of Regulation for Matriculation Schools (hereinafter referred to as Code of Regulation) are implemented in letter and spirit by the concerned, including the school authorities in respect of all the Matriculation Schools recognised under the said code. The teachers, who are doing equal work as performed by their counterparts in the schools run by the Government, are unable to get equal pay as guaranteed under the Constitution.

6. Every Matriculation School is a recognised school under the Code of Regulation for Matriculation Schools of Tamil Nadu. Once they get benefited under the Code, it is incumbent upon them to implement the provisions thereon. Regulation 16 of the Matriculation Schools provides that teachers and non-teaching staff of Matriculation Schools should be paid at least the Government scale of pay which are revised from time to time. Therefore, the barest minimum expectation under the Code, in view of the employment of the word "at least", has to be taken on par with the Government teachers. If teachers suffer of poverty and paucity of funds, the same will affect their mind. Once their mind is affected, the reflection would be on their family and children and the pathetic conditions in which they are placed, will ultimately affect their efficiency in teaching the students. The disparity shown to the teachers would significantly lower down the efficiency of the students. The managements have undertaken to pay the scales and had deliberately failed to implement the same. Even at the time of granting recognition, the authorities imposed a condition that the management schools shall provide the scale of pay as fixed by the State Government in all the Matriculation Schools from time to time, but, however, it is not being done. In certain schools, only a consolidated salary is being paid which is far less than the prescribed scales of pay.

7. The contentions of the School Managements, tersely are as follows:

The schools are not at all receiving any grant or aid from the State Government and hence, it is not possible for them to pay salary as revised from time to time by the Government. If the scales of pay as fixed by the Government are applied to the schools which are self-financing institutions, they will have to close down the schools. Since the schools are unaided, they are not governed by the financial code. The Code of Regulations cannot be claimed as statutory provisions to confer any right upon the Writ Petitioners. It has no statutory force. The rights of the minority institutions are protected by the Constitution of India.

8. It is a settled position that Writ Petitions cannot be filed by the teachers in private institutions to implement any notification issued by the Government. The management of the schools have no sufficient resources to meet the fluctuations in pay, as only fixed fees on the lowerside are paid by the students. The incentive increments given by the Government to its staff for acquiring degree and post-graduate degree qualifications and other allowances are not applicable to private schools. The students in any of the Matriculation Schools which remain unaided, are hailing from down trodden sections and they could not afford to pay more fees to the school so as to enable them in turn to pay salary to the teachers on par with the Government teachers. The object of starting schools in the remote places is to uplift the level of education in backward areas and to improve the educational qualifications of the students who are hailing from economically oppressed families. It is practically not possible to accede to the request of the Writ Petitioners since the management schools are facing acute financial crisis.

9. The stand of the Director of School Education, is concisely as follows:

Under Chapter V, in proviso 16(ii) of the Code of Matriculation Schools, it is stated that teachers and non-teaching staff in Matriculation Schools should be paid salary at least on par with the Government scales of pay revised from time to time. A limited number of Matriculation Schools are able to pay the salary on par with the Government scales of pay to the teachers. The Matriculation Schools have become a very common variety where even children belonging to the lower strata could get admission. On the Government side, the salaries of teachers are increased many fold and the Matriculation Schools presently numbering about 3,538 are struggling to pay reasonable salary to the teachers as their resources are limited and the income generated as fees through students is inadequate.

10. In view of the principle laid down by the Supreme Court restraining the Government from imposing any regulation and also passing any order on the managements of private unaided educational institutions in respect of the fee to be charged and recruitment of staff, the Government are not in a position to suggest that the educational agencies be called upon to fulfill the conditions regarding the pay of teachers which it has stood committed from the time when permission or recognition was granted for a school. The decision on the fee to be charged must necessarily be left to the private educational institutions, which does not seek or which is not dependent upon any funds from the Government. The Committee constituted as per certain Government Orders suggest that the Government may consider advising the managements to pay such salaries as are commensurate with that of the fee suitably adopted and the managements may be further advised to set apart i.e., at least 70% of their collection of tuition fees, towards the commitments of teachers' pay.

11. While we enter in the discussion, we have to deal with the above said pleas at some length. There was considerable debate before us on the concept of "equal pay for equal work", an advisedly coined terminology. In the background of rival submissions on behalf of the parties to the proceedings, the issue in dispute has to be decided following the principles laid down by the Supreme Court. The Writ Petitioners, either the individual teachers or the association of teachers would put forth a plea that when the unaided educational institutions contend on the ground of limited resources for the payment of salary to the teachers in their schools on par with the Government Schools, is not possible, as per the salutary provisions and the well settled principles of law, the managements of Matriculation Schools are bound to pay equally on par with the Government. The learned Judges have decided in favour of the Writ Petitioners (teachers) following decisions of the Supreme Court. In order to have a thorough glimpse of the matter, Rules 16(ii) and 18(ii) have to be looked into alongside with G.O.2(D) No. 46 School Education. (X2) Department, dated 21.07.2004.

Code of Regulation for Matriculation Schools:

Chapter V

16.(ii) The teachers and non-teaching staff in Matriculation Schools should be paid at least as per the Government scales of Pay revised from time to time.

Chapter VI: Staff

18 (ii) The staff in Matriculation Schools will be paid at the rate of Government scales of pay and they are eligible for selection grade after 10 years of service as in other recognised schools. The teachers and other persons employed in Matriculation schools shall be governed by the code of conduct as specified in Annexure VII.

12. As per G.O.2(D) No. 46 School Education. (X2) Department, dated 21.07.2004 the following are the three issues relating to Matriculation Schools for making suitable recommendations on their functioning in Tamil Nadu:

i) Fee structure for Matriculation Schools and Matriculation Higher Secondary schools.

ii) A set of minimum infrastructural facilities for Matriculation Schools and Matriculation Higher Secondary schools.

iii) Salary scales for Teachers of Matriculation Schools and Matriculation Higher Secondary Schools.

....

Under the third category namely "salary scale for teachers" the G.O. would read as follows:

III. Salary of Teachers:

The Director of Matriculation School is instructed to send circular to individual managements of the Matriculation High Schools and Matriculation Higher Secondary Schools in the form of advice informing them the recommendations of the Committee and suggesting that in the matter of payment of salary to teachers the managements are advised to adopt a policy of fair-mindedness, while paying their qualified teachers such salaries as are commensurate with the fee structure that is adopted.

13. As far as the above said Code of Regulation is concerned, it has given executive instructions to pay the salary at least as per the Government scales of pay revised from time to time. However, it is argued that they have no statutory force. Even if the contention is acceptable, still, the law of the land has to be followed in this regard. While discussing this point, a decision of this Court is referable which has been rendered in a matter wherein the vires of the provisions of the Tamil Nadu Recognised Private Schools Regulation Act, 1973 and the Rules framed thereunder were challenged. The learned Judge of this Court has delivered a judgment reported in 2002 (6) Wri LR 688, Tamil Nadu Matriculation and CBSE School Teachers Association, rep. by its General

Secretary, Anna Nagar, Madras, 40 v. State of Tamil Nadu, rep. by the Commissioner and Secretary to Government, Education Department, Fort. St. George, Madras and two Ors. by which, after drawing inspiration from the guidelines contained in a decision of the Supreme Court, dismissing the Writ Petition and observing that till the Legislature brings a legislation for Matriculation Schools on par with the Tamil Nadu Recognised Private Schools Regulation Act, the Government is well within powers of issue executive instructions in the form of Government Orders. Clause 17 to 23 in Chapter 6 and 7 of the Code of Regulations were held valid, finding that they are more exhaustive and providing for service conditions to teachers and other staff.

14. The Apex Court decision in the case of [Commissioner of Income Tax, Gujarat-III, Ahmedabad Vs. Ahmedabad Rana Caste Association](#), has been followed in the aforesaid judgment of this Court, wherein it is held as under:

20. It is neither necessary nor possible to give an exhaustive enumeration of the kinds and categories of executive functions which may comprise both the formulation of the policy as well as its execution. In other words, the State in exercise of its executive power is charged with the duty and the responsibility of carrying on the general administration of the State. So long as the State Government does not go against the provisions of the Constitution or any law, the width and amplitude of its executive power cannot be circumscribed. If there is no enactment covering a particular aspect, certainly the Government can carry on the administration by issuing administrative directions or instructions, until the legislature makes a law in that behalf. Otherwise, the administration would come to a standstill.

15. The said Supreme Court ruling has also been followed by a Division Bench of this Court in C. Stephenson Roobasingh v. State of Tamil Nadu and Ors. 1993 Writ L.R. 544. In view of the above said decision, it is obvious that the instructions of the Government in the form of the Code of Regulations are legally sustainable and the concerned managements are supposed and expected to follow them scrupulously.

16. On behalf of the Petitioners, oft-quoted decisions of the Supreme Court on this subject have been cited. In [Frank Anthony Public School Employees' Association Vs. Union of India \(UOI\) and Others](#), wherein the Supreme Court, after elaborately discussing the contentions put forth by the unaided Minority Schools, has observed as follows:

23. We 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 the Delhi School Education Act to the Frank 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 as 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 is the same 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.

17. In view of the Supreme Court decision cited supra, the plea advanced by the unaided Matriculation Schools that they may have to close down the schools if higher scales of pay have to be paid, is worth nothing.

18. In a subsequent decision, in the case of K. Krishnamacharyulu and Ors. v. Sri Venkateswara Hindu College of Engineering and Anr. AIR 1998 SC 295, the Apex Court has directly been on the point in laying down the dictum that the teachers in an educational institution are entitled to get equal pay on par with the Government employees. It has been pithily explained in the operative portion of the above said judgment, in paragraphs as follows:

4. 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 rule 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 decisions 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 get 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 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 a 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.

19. The law laid down by the Supreme Court holds the field. It is ruled in unequivocal terms by the Apex Court that equal pay for equal work is a cardinal principle of law. The said decision came to be passed in an appeal arising from the Writ Petition filed by the individuals who had been appointed on daily wages to the post of Lab Assistant as non-teaching staff in the Respondent private college. The Andhra Pradesh High Court had turned down their prayer. However, on appeal, the Supreme Court accepted their contentions and allowed the appeal by setting out the principles as stated above. By the said decision, it is settled that even the non-teaching staff working in a private educational institution are entitled to get equal pay on par with their counterparts serving under the Government institutions.

20. The Supreme Court, after critically examining the issue, further held in the afore-noted decision that in view of long line of decisions of the 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 education get an element of public interest in the performance of their duties and as a consequence, and the same requires to regulate the conditions of the services of those employees on par with the Government employees.

21. Identical view was echoed by a Division Bench of this Court in its order dated 05.09.2001 passed in Writ Appeal No. 461 of 2001, wherein it is held that as per G.O. Ms. No. 162 dated 13.04.1998, the managements like Matriculation Schools are liable to pay to their employees the wages on par with the employees in the Government Schools. While applying the principles set out in the case of [Commissioner of Income Tax, Gujarat-III, Ahmedabad Vs. Ahmedabad Rana Caste Association](#), to the present case, it ought to be held that the Appellant managements are burdened with the responsibility of making equal pay to their teaching and non-teaching staff on par with those working in the Government Schools. this Court has also been of the similar view.

22. We have bestowed out best of consideration to the rival submissions of both the parties, in the light of well settled authoritative principles. In view of the above said weighty judicial pronouncements, we are of the opinion that the managements of unaided educational institutions cannot complain about the infringement of fundamental rights to administer the institution, when they deny the members of its staff, the opportunity to achieve the very object of Article 13(1) of the Constitution which is to make the institution an effective one. Converse of this concept has to be necessarily discountenanced.

23. By a conspectus of the subject, following propositions are formulable. The conclusion in each of these cases which are based on ultimate analysis, are designed to achieve such goals without which, it will nullify the very object of the consideration to a substantial measure. The object behind this principle is that the purpose is not to interfere with the administration of the autonomous institution, but it is merely to improve the excellence and efficiency of education, because a really good education can be received only if the tone and temper of the teachers are so framed as to make them to teach the students with devotion and dedication and put them above all.

24. The standard expected of a person intending to serve as a teacher could be achieved only when they are placed equally with the same class of people in Government institutions. Their rights are well insulated by the protective cover of Rules contained in Code of Regulation for Matriculation Schools, which cannot be chiseled out by the plea that the school managements derive pitiable proceeds. When such rights are absolute in character, there could be no stumbling-block for the Government to issue executive fiat, regulating their pay as found in the said Code of Regulations.

25. Indisputably, a school or a college is personified through its teachers who put together play vital role and make focal point on which outsiders look at it. The teachers are the hub on which all the spokes of the school are set around whom they rotate to generate good result. While ill-paid teachers may not strictly be stated to be a cause for dropping grade of institution, well paid teachers would prove and could definitely claim that improvement in standard of education was by their leaps and bounds. The functional efficacy of a school very much depends upon the efficient and dedication of well placed teachers. The pictograph of a school can very well be ascertained by the productive teachers working therein. Degradation of creativity in the teachers could not be tolerated, since they are affiliated with the responsibility of producing good students. The Courts cannot also be oblivious of this circumstance. The principles formulated by this Court are vigorously expressive.

26. The issue has been set at rest by the Supreme Court. The law in this behalf is explicit. In view of this, it is futile to contend that the Writ Petitioners could not invoke the principles of equal pay for equal work in the peculiar circumstances of these matters and there could be no comparison about the private unaided schools and the teachers serving in the Government Schools. This notion is conceptually misconceived. It is to be borne in mind that while getting recognition from the Government for upgrading the school, the Matriculation School authorities had thrown out the undertaking to the Government to abide by the guidelines formulated by the Government in the matter of payment of scales of their staff equal to those of the Government Staff.

27. In [State of Haryana and others Vs. Rajpal Sharma and others](#), ., the Supreme Court has referred to a Larger Bench decision of the Court and while clarifying the position, it was held that, the observations leave no doubt or scope for the Court and has directed that the teachers of the aided schools be paid the same scales of pay and dearness

allowance as teachers in the Government Schools get and that the said payment must be made for the entire period claimed by the Appellants and the Petitioners in those cases.

28. As per the consistent view taken by the Supreme Court and in the backdrop of the legal positions laid down, which have been illuminated in its decisions, it must be held that the Matriculation School teachers are entitled to get equal pay on par with the teachers who are working in the Government Schools. This view is judicially settled conviction. The legally assertive expressions could never be ignored. As far as W.P. No. 764 of 2001 is concerned, the non-teaching staff in the third Respondent educational institutions are also entitled to get equal pay on par with their counterparts serving in the Government Schools. Therefore, the views expressed by the learned Judges in their respective orders deserve to be confirmed.

29. Writ Appeal No. 1309 of 2000 has arisen from the order passed in Writ Petition No. 3373 of 1993. The request of the Writ Petitioner, namely, Mrs. Hilda Anbiah is two folded. One is to appoint her as the Principal of the third Respondent school, namely, Noyes Matriculation Higher Secondary School, Madurai and the other relief sought for is to pay her the dearness allowance, advance incentive increment and other benefits on par with the Government employees in accordance with Chapter V, Article 16 and Chapter VI, Article 18 of the Code of Regulation of Matriculation Schools in Tamil Nadu together with arrears.

30. It is her contention that even though she was qualified as per the Regulations of the School, she was ignored and another teacher Mrs. K. Rajamanickam was promoted to the post of Principal, violating the procedure.

31. After discussing the contentions of both sides, the learned single Judge has turned down the request of the Petitioner as far as the direction for appointment is concerned, but allowed the Writ Petition as regards the payment of salary to her on par with the Government school teachers. The learned single Judge in order to arrive at the conclusion with regard to the appointment of Petitioner as the Principal in the school, has taken into consideration, the competency of the minority school to appoint any person chosen by it.

32. The learned single Judge has relied upon various decisions of the Supreme Court. In our considered view, the decision arrived at by the learned single Judge is quite appropriate. With reference to the grant of relief, as to her appointment as Principal, the Writ Petitioner has not preferred any appeal. Regarding the relief for direction to payment of salary to her on par with the Government school teacher, the school management has preferred Writ Appeal No. 1309 of 2000. The observations which we have furnished supra are squarely applicable to the contention of the writ Petitioner.

33. Writ Petition No. 10008 of 2004: The Writ Petitioner is the Special Officer/President of Salem Co-operative Sugar Mills Matriculation Higher Secondary School, Mohanur. He has challenged a proceedings issued by the second Respondent, namely, the Director of

Matriculation Schools, Madras, dated 12.02.2003, by means of which, he has directed him to pay the Government scales of pay and other attendant benefits to the teaching and non-teaching staff, as requested by the General Secretary of Teachers Front.

34. In view of the findings reached by us as for the entitlement of the matriculation school teachers of the Petitioner management, the necessary corollary would be, the directions ought to be held valid by observing the impugned proceedings of the Directorate of Matriculation Schools dated 12.02.2003 is quite in order and legally sustainable. The Writ Petition does not merit any consideration. Chapter V Article 16(ii) and Chapter VI and Article 18(ii) of Code of Regulation for Matriculation Schools are reasonable and held valid.

35. Our discussion as stated above paves way to conclude that the orders passed by the learned single Judges do not suffer from any infirmities. They deserve to be confirmed and they are accordingly confirmed. Writ Appeals and W.P. No. 10008 of 2004 do not merit consideration.

In fine, Writ Appeals and Writ Petition No. 10008 of 2004, have to suffer dismissal. Accordingly, they are dismissed. No costs.