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**S. Devakadaksham Vs. the District Educational Officer,**

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**SooperKanoon Citation : [sooperkanoon.com/840871](http://sooperkanoon.com/840871)**

**Court : Chennai**

**Decided On : Sep-13-2006**

**Reported in : (2006)4MLJ1580**

**Judge : D. Murugesan and ;V. Ramasubramanian, JJ.**

**Acts :** Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 - Sections 2(7), 4 to 6, 11, 11A, 14, 14(1) and 56; Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 - Rules 4 to 7, 9, 10, 11, 11(1), 11(2), 11(3), 11(4) and 11(5); [Constitution of India](#) - Articles 14, 16, 21A and 39

**Appeal No. :** Writ Appeal Nos. 26, 27, 28, 648, 649, 1073, 1074, 3608, 3609 and 3610 of 2003 and WAMP Nos. 35, 36,

**Appellant :** S. Devakadaksham

**Respondent :** The District Educational Officer, ;The Director of School Education and the Secretary, Education Dep

**Advocate for Def. :** A. Arumugham, Addl. Govt. Pleader.

**Advocate for Pet/Ap. :** M. Kamalanathan, Adv. in WA Nos. 648, 27, 28, 1073 and 1074 of 2003, ;A.R.L.Sundaresan, Sr. Counsel for ;A.L. Gandhimathi, Adv. in WA Nos. 26, 649 and 3608 to 3610 of 2003

**Disposition :** Appeal dismissed

## **Judgement :**

### **V. Ramasubramanian, J.**

1. All these writ appeals are filed by the teaching/non-teaching staff of recognized private schools, which were sanctioned grant-in-aid with effect from 1.6.1991/1.6.1994.

2. In short, the grievance of the appellants is that after the sanction of grant-in aid to their schools and the sanction of the posts held by them, the services rendered by them prior to the date of sanction of grant-in aid and the sanction of the posts, were directed to be counted only for the purpose of promotion. But following a Government Order in G.O.Ms. No. 18, Education, Science and Technology (T2) Department, dated 9.1.1997, passed in favour of one individual by name M.Jayaraj, the appellants were also granted the benefit of counting the past services for the purpose of pay fixation and pension. However, by a later order in G.O.Ms. No. 314, School Education (T2) Department, dated 12.11.1999, the said benefit of counting the past services, for the purpose of pay fixation and pension, was withdrawn, leading to consequential orders of downward revision of pay and recovery.

3. The batch of writ petitions filed by the appellants as well as others, challenging the aforesaid G.O.Ms. No. 314, School Education (T2) Department, dated 12.11.1999 and the consequential orders of refixation of pay and recovery, were dismissed by the learned Judge, however with a direction to give an opportunity to the individuals, for the purpose of quantifying the amount to be recovered from each of them. The said order of the learned Judge has led to the above appeals.

4. We have heard Mr. A.R.L. Sundaresan, learned senior counsel and Mr. M. Kamalanathan, learned Counsel appearing for the appellants in the above appeals and Mr. A. Arumugham, learned Additional Government Pleader for the official respondents.

5. Leading the attack on the order under appeal, Mr. A.R.L. Sundaresan, learned senior counsel contended -

a) that a benefit conferred upon the appellants by virtue of a Government Order in G.O.Ms. No. 18, Education, Science and Technology (D2) Department, dated 9.1.1997, cannot be taken away by another order passed in the year 1999, without affording an opportunity to the appellants, as the orders passed in 1999, visited the appellants with civil consequences;

b) that the benefit of counting the past services rendered by the appellants, prior to the sanction of grant-in aid and the sanction of the posts, for the purpose of pay fixation and pension, was conferred upon the appellants, by virtue of a conscious decision taken by the Government and not as a result of any mistake on the part of the officials or any misrepresentation on the part of the appellants and that therefore the benefit cannot be withdrawn as a matter of routine, in the usual course, as a vested right had been conferred upon the appellants;

c) that the impugned Government Order G.O.Ms. No. 314, School Education (D2) Department, dated 12.11.1999, was passed on the basis of another order in G.O.Ms. No. 439, Education (D.1) Department, dated 5.5.1993, which had no relevance to the issue on hand and hence the impugned order was vitiated for non application of mind;

d) that it is a constitutional mandate for the State to ensure imparting of Primary and Secondary Education and that therefore it is the duty of the State to sanction grant-in aid to institutions which are recognized by the Government; and

e) that it is the duty of the State to maintain parity of pay between teaching and non-teaching staff of aided/unaided schools and government schools and that the benefit granted to the appellants for counting their past services for the purpose of pay fixation and pension, was in tune with the principle of equal pay for equal work.

6. In reply, Mr. A. Arumugham, the learned Additional Government Pleader took us through the various Government Orders issued prior to the order under which the benefit was extended to the appellants. He also took us through various provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the Rules framed thereunder.

7. We have carefully considered the rival submissions with reference to the statutory provisions and the case law relied upon by the counsel on both sides.
8. In order to appreciate the rival contentions, it is necessary to trace the history of the Government Orders in dispute and the relevant provisions of the statute and hence we do so in the following paragraphs.
9. The Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 (Tamil Nadu Act 29 of 1974) hereinafter called the 'Act', was enacted with the twin object of regulating the establishment, management and control of private schools and regulating the conditions of service of teachers and other persons employed in private schools. The definition of 'Private School' under Section 2(7) of the Act included 'a pre-primary, primary, middle or high school or higher secondary school or any other institution imparting education or training, established and administered or maintained by any person or body of persons, and recognized by the Competent Authority.'
10. Chapter II of the Act requires the permission of the Competent Authority even to establish any private school and the provisions contained in Chapter II prescribes the manner in which an application for permission shall be submitted as well as the manner in which the Competent Authority shall consider and dispose of such application for permission.
11. Chapter III of the Act deals with 'Recognition' of private schools and the 'Payment of Grant'. Under the provisions contained in Chapter III, unless a person has obtained the permission of the Competent Authority to establish a private school, he cannot seek 'Recognition' under the Act, except in case of a minority school. Even after the grant of permission as well as recognition, there is no guarantee for the payment of grant-in-aid or financial assistance from the Government, under the Act.
12. Thus, the Act contemplates three different stages in the matter of establishment, administration and maintenance of private schools viz., (i) grant of permission (ii) grant of recognition and (iii) grant of aid or financial assistance. While Sections 4 to 6 of the Act under Chapter II, focus attention on the

infrastructural facilities available in the school, for the purpose of grant of permission, Sections 11 and 11-A under Chapter III of the Act focus attention on the arrangements for the maintenance of academic standards in the school for the purpose of grant of recognition. A school which has obtained permission for its establishment and which has also obtained recognition, qualifies for grant-in aid, though grant-in-aid is not automatic or guaranteed. Section 14 of the Act, dealing with payment of grant, reads as under:

Section 14. Payment of grant.---

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force, or in any decree, order or direction of any court or other authority,---

(i) no private school shall, only on the ground of having been granted recognition under this Act, be entitled to any grant or other financial assistance from the Government;

(ii) the Government may, subject to,---

(a) the availability of funds;

(b) the norms and conditions specified in the Grant-in-aid Code of Tamil Nadu Educational Department;

(c) the condition that every private school receiving any grant or financial assistance from the Government levies and collects from the pupils only such fee, charge or other payment as may be specified by the competent authority, which shall not be in excess of the fee, charge or other payment, levied and collected from the pupils studying in the schools or institutions established and administered or maintained by the State Government, or any local authority in the locality;

(d) the rules, orders and notifications issued by the Government, from time to time; and

(e) such other conditions as may be prescribed, pay to private school grant or other financial assistance at such rate and for such purposes as may be prescribed.)

(2) The Government may withhold permanently or for any specified period the whole or part of any grant referred to in Sub-section (1) in respect of any private school,---

(i) which does not comply with any of the provisions of this Act or any rules made or directions issued thereunder in so far as such provisions, rules or directions are applicable to such private school, or

(ii) in respect of which the pay and allowances payable to any teacher or other person employed in such private school are not paid to such teacher or other person in accordance with the provisions of this Act or the rules made thereunder, or

(iii) which contravenes or fails to comply with any such conditions as may be prescribed.

(3) Before withholding the grant under Sub-section (2), the Government shall give the educational agency an opportunity of making its representation.

13. The Tamil Nadu Recognised Private Schools (Regulation) Rules 1974 hereinafter called the 'Rules', issued in exercise of the powers conferred by Section 56 of the Act, detail the procedure for grant of permission under Rules 4 to 7. Rules 9 and 10 deal with the grant and withdrawal of recognition and Rule 11 deals with payment of grant. While Sub-rule (1) of Rule 11 enables the payment of grant to recognized private schools, from State funds directly or through panchayat unions subject to Government Orders and instructions from time to time, sub rules (2), (3) and (4) of rule 11, deal with the rate of grant and the authorities competent to sanction and to withhold payment of grant. Sub-rule (5) of Rule 11, which is of significance, reads as under:

Rule 11. Payment of grant.---

(1) ...

(2) ...

(3) ...

(4) ...

(5) Notwithstanding anything contained in the Act or in any other law for the time being in force or in any decree, order or direction of any court or other authority:

(i) no private school shall, only on the ground of having been granted recognition under the Act, be entitled to any grant or other financial assistance from the Government;

(ii) the Government may, subject to

(a) the availability of funds;

(b) the norms and conditions specified in the Grant-in-Aid Code of Tamil Nadu Education Department.

(c) the condition that every private school receiving any grant or financial assistance from the Government levies and collects from the pupils only such fee, charges or other payment as may be specified by the competent authority, which shall not be in excess of the fee, charge or other payment levied and collected from the pupils studying in the schools or institutions established and administered or maintained by the State Government, or any local authority in the locality:

(d) the rules, orders and notifications issued by the Government from time to time; and

(e) such other conditions as may be prescribed by Government to the private school grant or other financial assistance at such rate and for such purposes as may be prescribed.

14. A reading of Section 14 (1) of the Act and Rule 11 (5) of the Rules would show that they are in pari materia. They make it clear -

a) that the grant of aid or other financial assistance does not automatically flow out of the grant of recognition as a necessary corollary;

b) that the Government is vested with the discretion to provide grant or other financial assistance, subject to availability of funds and subject to the norms and conditions specified in the Grant-in-Aid Code and also subject to the condition that such school does not levy fees, charges or other payments in excess of what is prescribed by the competent authority and which is not in excess of what is collected from pupils studying in Government schools or schools of the local authority.

15. In backdrop of the above statutory provisions, the Government have issued various orders from time to time, relating to the sanction of grant-in-aid, some of which are relevant for the purpose of deciding the issue on hand.

16. The first of the said Government Orders, relevant for the case on hand, was issued in G.O.Ms. No. 340, Education (D.1) Department, dated 1.4.1992. This Government Order was a Sequel to the recommendations made by two Committees, of which, one was an 'Inspection Committee' constituted by the Director of School Education in pursuance of the directions issued by the Government on 18.4.1991 and another was an 'Official Committee' constituted by the Government under G.O.Ms. No. 495, Education, dated 29.4.1991. The Inspection Committee, inspected the schools which were running without or with partial grant, studied the location of the schools, their student strength, the number of schools in the locality, the number of students enrolled and teachers employed and the fee collected and salary paid and submitted a report containing the data. The data so provided by the Inspection Committee was examined by the Official Committee and appropriate norms were drawn and adopted by the Committee for sanction of teaching and non-teaching posts to those schools. After evolving a staff pattern, the Official Committee made its recommendations and the recommendations were accepted by the Government, under the said G.O.Ms. No. 340, Education (D.1) Department, dated 1.4.1992. The norms evolved under the said Government Order related to 'sanction of posts in private/ aided primary / middle / secondary / higher secondary schools opened in 1987-88 and earlier' as seen from para-3 of the G.O.

17. Simultaneously, the Government issued G.O.Ms. No. 341, Education (D.1) Department, dated 1.4.1992, sanctioning 746 posts, category wise, on the regular time scale of pay, with minimum in the time scale of pay being allowed from 1.6.1991 and increments allowed in future as and when due. The relevant portion of this G.O.Ms. No. 341, Education, dated 1.4.1992, reads as follows:

2. ...

The Government after careful consideration have accepted the recommendation of the Official Committee and decided to sanction posts as recommended by the Committee for assessment of salary grant from 1.6.1991 and accordingly sanction 746 posts category wise as mentioned above on the regular time scales of pay, the minimum being allowed from 1.6.1991 and increments allowed in future as and when due. Detailed sanction orders for individual schools or groups of schools which are to get posts out of these 746 posts will be issued separately as indicated in paras 3(c) & 3(e) below:

3. Having regard to all the relevant parameters the Government issue the following further orders:

(a) Minority and non-Minority schools given recognition/and permitted (for non-minority only) in 1987-1988 and earlier, be given grant with effect from 1.6.1991, to the extent of posts sanctioned in para 2 above, without eligibility for any arrears for the period prior to 1.6.1991.

18. Thus, it is seen from the above Government Orders, that in respect of schools which were granted recognition up to the year 1987-88, the Government collected data through an Inspection Committee and analysed the data through an Official Committee and sanctioned the creation of 746 posts category wise and also granted to those sanctioned posts, regular time scales of pay, subject to two conditions namely (i) that persons appointed / already in service in those sanctioned posts, will be placed in the minimum of those time scales of pay on 1-6-1991 and (ii) that they will be entitled only to future increments as and when due.

19. Admittedly, it is only by virtue of the aforesaid Government Orders that some of the appellants were granted regular time scales of pay, with effect from 1.6.1991, as a result of their appointment against the sanctioned posts or the posts occupied by them getting sanctioned. In other words, some of the appellants became entitled to the grant of time scales of pay with effect from 1.6.1991, with their pay being fixed on the minimum of the time scale as on 1.6.1991 with future increments becoming due only from the said date.

20. As the aforesaid orders of the Government in G.O.Ms. Nos. 340 and 341 dated 1.4.1992, covered only those schools which were opened with permission and recognition up to 1987-88, the other schools opened/upgraded in 1988-89 and 1989-90 also started knocking at the doors of the Government. Therefore, the Government issued G.O.Ms. No. 50, Education, Science and Technology (D.1) Department, dated 20.1.1995, sanctioning teaching and non-teaching posts to the schools indicated in annexures I, II and III to the said order for assessment of salary grant with effect from 1.6.1994. As in the previous orders, the Government made it clear in this said order also that the regular scales of pay were being granted with effect from 1.6.1994, the minimum being allowed from 1.6.1994 and increments due only in future. Just as some of the appellants were beneficiaries under the earlier orders (G.O.MS. Nos. 340 and 341 dated 1-4-1992) the others got the benefit of regular time scales of pay with effect from 1-6-1994 by virtue of this government order G.O.Ms. No. 50, dated 20-1-1995. This is how the appellants have come on to regular time scale of pay with effect from 1-6-1991 or 1-6 1994.

21. After the sanction of the posts and the sanction of grant-in-aid under the aforesaid orders, to teachers and other staff like the appellants, a question arose as to whether the services rendered by them prior to 1.6.1991, could be counted as qualifying service for the purpose of promotion to the next higher post. Upon finding that the grant of such a benefit would not impose a financial burden upon the State, even while benefiting the teachers, the Government issued G.O.Ms. No. 439, Education (D.1) Department, dated 5.5.1993, para-2 of which reads as follows:

2. The Government consider that in all such cases the period of service rendered before 1.6.1991, in the posts admitted for grant from 1.6.1991 as per G.O.Ms. No. 341, Education, dated 1.4.1992 should be allowed to be counted as qualifying service for reckoning the prescribed period of experience to be undergone for promotion to higher posts in recognized Private Schools.

22. After slowly making inroads into the earlier Government policy with regard to the cut off date viz., 1.6.1991(or 1-6-1994 as the case may be), by seeking the benefit of counting the past services only for the purpose of promotion, the teachers, in individual cases, started demanding the benefit of counting the past services for the purpose of pay fixation and pension also. One teacher by name M.Jayaraj, Headmaster of Assumption High School, Chennai-34, initiated this process by making a representation that his past services rendered before 1.6.1991 in the non-sanctioned post (before the grant of aid) should be counted for the purpose of fixation of pay as on 1.6.1991 and for pensionary benefits. He managed to have his representation duly recommended by the Director of School Education, resulting in the Government issuing G.O.Ms. No. 18, Education, Science and Technology Department, dated 9.1.1997 that laid the foundation for the controversy on hand. Under the said order, the Government not only granted permission for counting the past services of M.Jayaraj for the purposes of fixation of pay and pension but also empowered the Director of School Education himself to take action in similar circumstances.

23. Consequently, the teaching and non-teaching staff of recognized private schools, like the appellants herein, obtained individual orders from the Director of School Education himself, counting the past services rendered by them prior to 1.6.1991/1.6.1994 as the case may be, both for the purpose of pay fixation as well as pension.

24. After about two years, the Government woke up to reality and issued the order impugned in the writ petitions namely G.O.Ms. No. 314, School Education Department dated 12.11.1999, canceling the earlier order G.O.Ms. No. 18 dated 9.1.1997 and making it clear that the past services would be counted only for the purpose of promotion and not for pay fixation and pension. In pursuance of the

said order, individual orders of re-fixation of pay and recovery were passed by the Competent Authorities. Aggrieved by those orders, the appellants and others filed a batch of writ petitions.

25. By a common order dated 8.11.2001, the learned Judge dismissed all the writ petitions, after holding that the appellants had no right to seek the benefit of counting past services for the purpose of pay fixation and pension. However, in so far as individual orders of recovery were concerned, the learned Judge issued a direction in para-17 of the judgment, to the concerned authorities to afford due opportunity to the petitioners and thereafter, proceed with the recovery of the amount found to have been paid in excess of what they were entitled to. This direction of the learned Judge was also restricted only to the extent of determining the quantum of amount to be recovered from the appellants. The State has not preferred any appeal in so far as the directions in para-17 of the judgment are concerned. But the appellants have filed the above appeals, as against the substantial portion of the judgment of the learned Judge.

26. It is in the background of the above factual and legal aspects that the rival contentions of the counsel for both sides should be analysed. In so far as the first contention of Mr. A.R.L. Sundaresan, learned senior counsel appearing for the appellants is concerned, with regard to the failure to provide an opportunity before passing the orders of recovery, it is seen that the direction issued by the learned Judge in para-17 of the judgment has taken care of this objection. Therefore, nothing survives in respect of the first contention.

27. The second contention raised by the learned senior counsel is that while granting the benefit under G.O.Ms. No. 18 dated 9.1.1997, the Government took a conscious decision and hence it cannot be changed at their whims and fancies. But we are not impressed with the said contention. G.O.Ms. No. 18, dated 9-1-1997, does not even contain a reference to G.O.Ms. Nos. 340 and 341, dated 1-4-1992, which happened to be the source from which the very grant was extended and posts sanctioned by the Government to enable the appellants and others to come over to time scales of pay on par with Government servants. The said Government orders G.O.Ms. Nos 340 and 341, dated 1-4-1992 are the parental

orders, out of which all others followed as off-shoots. But G.O.Ms. No. 18 did not even make a reference to these parental orders and hence it cannot be said that the Government took a conscious decision while issuing G.O.Ms. No. 18.

28. The 3rd contention raised by the learned Senior Counsel is that the impugned Government Order G.O.Ms. No. 314, School Education (D2) Department, dated 12.11.1999, was passed on the basis of another order in G.O.Ms. No. 439, Education (D.1) Department, dated 5.5.1993, which had no relevance to the issue on hand. To some extent, it is true. The actual orders which had relevance to the said G.O.Ms. No. 314 dated 12-11-1999, were the original orders G.O.Ms. Nos. 340 and 341, dated 1-4-1992. But the order referred to in the order impugned in the writ petition, namely G.O.Ms. No. 439, is not totally irrelevant to the issue. G.O.Ms. No. 439 limited the benefit of counting past services to promotion only and to this extent, this G.O. was also relevant, though in a limited way. More over, this argument can also be applied reversely to the appellants themselves, since even in G.O.Ms. No. 18, under which the appellants were granted a benefit referred only to this G.O.MS. No. 439 only.

29. The next contention of the learned senior counsel for the appellants, which appears to be the most powerful weapon in the hands of the appellants, as it is based upon the rights guaranteed under the Constitution and the Directive Principles of State Policy enshrined in the Constitution, is that it is a constitutional mandate for the State to ensure imparting of Primary and Secondary Education and that therefore it is the duty of the State to sanction grant-in-aid to institutions which are recognized by the Government. In support of his contention, the learned senior counsel relied upon the decisions of the Apex Court in *The Chandigarh Administration and Ors. v. Mrs. Rajni Vali and Ors.* 2000 (1) Sup 135, *State of Haryana and Anr. v. Babita Yadav and Ors.* CDJ 2003 (SC) 685, *State of Rajasthan and Anr. v. Senior Higher Secondary School, Lachhmangarh and Ors.* (2005) 10 SCC 346, and *State of Haryana and Ors. v. Champa Devi and Ors.* 2002 (2) Sup 116. The learned Senior counsel also relied upon other judgments for the proposition that there should be equal pay for equal work.

30. Before adverting to the judgments cited by the learned senior counsel, it may be useful to refer to the relevant provisions of the Constitution upon which the claim of the appellants is based. Article 39(d) of the Constitution included in Part IV contains a 'Directive Principle of State Policy', which reads as follows:

39. The State shall, in particular, direct its policy towards securing -

(a) ...

(b)...

(c)...

(d) that there is equal pay for equal work for both men and women;

Though the Directive Principles of State Policy are not enforceable in the Courts and they do not create any justiciable rights in favour of individuals, the violation of a fundamental right, arising out of the Directive Principles may be enforced in a Court of Law. Therefore, the appellants seek to place their claim of equal pay for equal work, on par with Government School teaching and non-teaching staff, on the foundation of Articles 14 and 16 of the Constitution read with Article 39(d). Their claim is now sought to be fortified by the introduction of Article 21-A in the Constitution, which makes education, a fundamental right. All the judgments relied upon by the learned senior counsel for the appellants, revolve around the said issue.

31. Coming to the judgments relied upon by the learned senior counsel for the appellants, relating to equal pay for equal work, it is seen that the case in Haryana State Adhyapak Sangh and Ors. v. State of Haryana and Ors. : (1995)IIILLJ710SC related to the claim of the teachers of aided schools for the same scale of pay and dearness allowance as that of teachers in Government schools. The Supreme Court held that these aided school teachers were entitled to the same scale of pay as teachers in Government schools. But the said judgment does not lay down the law that the aided school teachers are entitled to pay parity with Government school teachers even for the period during which their schools remained unaided. In the case before the Supreme Court the State of Haryana was following the

principle of parity of pay till 1979, but after the implementation of the recommendation of a Pay Commission, the Government revised the pay scales of Government school teachers and left the aided school teachers in the lurch. In other words, after maintaining parity of pay for a long time upto 1979, the State discriminated against aided school teachers at the time of implementation of the recommendations of the pay commission and hence invited the aforesaid judgment.

32. The case in *State of Haryana and Ors. v. Rajpal Sharma and Ors.* : (1996)IILLJ804SC was only an extension of the benefits conferred upon teachers by the earlier judgment in *Haryana State Adhyapak Sangh* case. Therefore, the said judgment is also not on the point whether the teachers are entitled to parity of pay even during the period in which their schools remained unaided.

33. In *State of Haryana and Anr. v. Ram Chander and Anr.* : AIR 1997 SC2468 the question was as to whether the teachers teaching Hindi and English to 11th and 12th standard students in the Haryana Government Vocational Education Institute were entitled to parity of pay with similarly placed language teachers teaching 11th and 12th standard students in Government Higher Secondary schools. Therefore, the Supreme Court went into details regarding the qualifications prescribed for the posts, the nature of the duties performed, both qualitatively and quantitatively and the service conditions of the teachers belonging to both categories. But the case on hand before us, is not really one arising out of a claim of equal pay for equal work. The appellants started their career in recognized unaided private schools, which were later sanctioned grant-in-aid, with the sanction of the posts held by the appellants. Virtually, it is only on the date on which the posts held by them got sanctioned, that they became entitled to the scales of pay sanctioned to Government School teachers/non teaching staff. With effect from the said date, they were granted the same scale of pay as was granted to their counterparts in Government schools. Therefore, the aforesaid decision of the Supreme Court does not go to the rescue of the appellants.

34. In *State of Haryana and Ors. v. Champa Devi and Ors.* 2002 (2) Supr 116, which followed the decisions in *Haryana Adhyapak Sangh* case and *Rajpal*

Sharma's case, the Supreme Court held that the teachers of aided schools must be paid the same scale of pay and dearness allowance as teachers of Government schools. As in the case of the above two citations, this case also arose out of the refusal of the State to extend the benefits of revision of pay scales and the grant of interim relief and incentives to private aided school teachers on par with Government school teachers. Similar is the case in *State of Haryana v. Babita Yadav* CDJ 2003 SC 685, wherein the aided college teachers were not paid salaries due to non receipt of grant and the Supreme court merely upheld the directions issued by the High court to release the grant. Thus it is seen, that in most of those cases before the Supreme court, a benefit was denied to aided school teachers and the Apex court went to their rescue. However, in the case on hand, what is denied to the appellants is only the benefit of parity of pay prior to their schools becoming aided schools and hence it stands on a different footing.

35. Coming to the other contention relating to the Constitutional mandate, it is seen that in *The Chandigarh Administration and Ors. v. Mrs. Rajni Vali and Ors.* 2000 (1) Sup 135, the Supreme Court held as follows:

Imparting primary and secondary education to students is the bounden duty of the State Administration. It is a Constitutional mandate that the State shall ensure proper education to the students on whom the future of the society depends. In line with this principle, the State has enacted Statutes and framed Rules and Regulations to control/regulate establishment and running of private schools at different levels. The State Government provides grant-in-aid to private schools with a view to ensure smooth running of the institution and to ensure that the standard of teaching does not suffer on account of paucity of funds. It needs no emphasis that appointment of qualified and efficient teachers is a sine qua non for maintaining high standard of teaching in any educational institution. Keeping in mind these and other relevant factors this Court in a number of cases has intervened for setting right any discriminatory treatment meted out to teaching and non-teaching staff of a particular institution or class of institutions.

In the said case, a recognized private educational institution receiving grant-in-aid from the Union Territory of Chandigarh Administration, was imparting education

only upto Class-X. With the permission of the competent authority, the school started higher secondary course (Plus 2), but the Administration imposed a condition while granting permission that no grant-in-aid will be provided for the additional staff required to take higher secondary classes. The Supreme Court frowned upon the Administration for not providing grant-in-aid upon the upgradation of an aided school and held as extracted above. Though the said case before the Supreme Court appears, on a cursory reading, to be almost similar to the case on hand, it is not actually so. In the case before the Supreme Court, the only reason for the Chandigarh Administration denying grant-in-aid for the additional staff, was that there was lack of sufficient financial resources and that even while granting permission to the school to start higher secondary courses, a condition was imposed that no grant-in-aid will be provided. But in the case on hand, there are statutory provisions contained in The Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the Rules framed thereunder, which stipulated various conditions for providing the grant-in-aid. Availability of funds was only one of the criteria for deciding the question of payment of grant. Section 14 of the Act and Rule 11 (5) of the Rules extracted supra, stipulated that the payment of grant depended upon the fulfillment of various conditions such as the level of fees, charges and other payments collected from pupils by the schools and the conditions and norms specified in Grant-in-Aid Code of the Tamil Nadu Educational Department. As stated earlier, the statutory provisions stipulated three stages viz., (i) stage of permission, (ii) stage of recognition and (iii) stage of payment of grant. While at the stage of grant of permission, the State considered the infrastructural facilities available in the schools, it considered the maintenance of academic standards at the stage of grant of recognition. At the third stage relating to payment of grant, the State considered various aspects such as the fees and other charges collected from the students. In the light of such statutory provisions, the Government sanctioned the payment of grant to the schools in which the appellants were employed, with effect from 1.6.1991/1.6.1994 and sanctioned the posts held by them. On and from the date of sanctioning the grant, the appellants were paid regular time scale of pay, with the minimum on the scale being granted from 1.6.1991/1.6.1994 and increments from future dates. In other words, the Government did not deny the

appellants of the benefit of parity of pay. The Government granted permission and recognition first and later sanctioned the payment of grant, after three to four years. Till 1997, the appellants never challenged the Government Orders G.O.Ms. Nos. 340 and 341 dated 1.4.1992 which restricted the benefit of pay fixation on regular time scales of pay only to prospective effect. In the year 1997, the appellants got a windfall, rather an unintended one, when one teacher got a benefit under G.O.Ms. No. 18 dated 9.1.1997. Therefore, the appellants are estopped from questioning the non-extension of the benefit with retrospective effect.

36. It is now well settled that the Government is obliged to sanction grant for payment of salary to a person appointed to a post, only if it is a sanctioned post. The posts held by the appellants got sanctioned by the Government only under G.O.Ms. Nos. 340 and 341 dated 1.4.1992. Therefore, the appellants are not entitled to the benefit of counting past services rendered by them prior to the sanction of their posts.

37. The next judgment relied upon by the learned Senior Counsel is the one in State of Rajasthan v. Senior Higher Secondary School, Lachhmangarh 2005 (10) SCC 346. Even the said case is not helpful to the appellants, since the very issue involved in the said case was whether the teachers of non government educational institutions who are receiving grant-in-aid, are entitled to selection scale as given to employees serving in government educational institutions. Thus all the cases relied upon by the learned Counsel appearing for the appellants related to aided school teachers, who were denied parity of pay or other benefits on par with government school/college teachers. None of the cases cited by the learned Counsel is in respect of the schools which remained unaided at the beginning and received grant later. The law laid down by the Apex court in the aforesaid case, summarized in para 23 of the judgment, reads as follows:

23. While construing the provision under consideration, it is to be borne in mind that interpretation of a welfare legislation should be to promote education. The service conditions of the employees of the aided institutions are sought to be improved and brought on a par with those in government educational institutions to

maintain educational standards. It has also to be borne in mind that our Constitution-makers have placed the field of education at a higher pedestal and granted it a special status. Various provisions of the Constitution deal with the aspect of advancement of education. Primary education has been held to be a fundamental right in the decision of this Court in *Unni Krishnan, J.P. v. State of A.P.* : [1993]1SCR594 and this aspect still holds the field despite the decision having been overruled on some other aspects in *T.M.A. Pai Foundation v. State of Karnataka* : AIR 2003 SC355 . To improve education, various State Governments grant aid to educational institutions and, by and large, teachers of aided private schools deserve to be treated on a par with teachers of government institutions to the extent possible. The provisions of these Acts deserve to be liberally interpreted in favour of the teaching class except where statute may compel otherwise. A statute of no other State has been brought to our notice where similar benefit has been denied to the teachers of the aided institutions to improve education. The service conditions of the teachers also deserve to be improved.

Thus it is clear that by the said judgment, the Supreme court held that teachers of aided private schools deserve to be treated on par with teachers of government institutions. But even while holding so, the Supreme court used the words 'by and large' and 'to the extent possible', obviously as a note of caution. Most strikingly, the Supreme court held in the said case that 'the provisions of the Act deserve to be liberally interpreted in favour of the teaching class except where statute may compel otherwise'. The provisions of The Tamilnadu Recognised Private Schools (Regulation) Act and the rules framed there under, which we have dealt with in extenso, in the previous paragraphs of this judgment, make the case on hand fall under the above qualifying statement of the Supreme court, prescribing an exception, namely 'the provisions of the Act deserve to be liberally interpreted in favour of the teaching class except where statute may compel otherwise'.

38. In order to overcome the stumbling block, in the form of statutory provisions, the learned senior counsel appearing for the appellants contended that the provisions of an Act or the instructions contained in Administrative Orders cannot prevail over the fundamental right guaranteed under Article 14 of the Constitution. In this connection, the learned senior counsel relied upon two Division Bench

judgments of this Court, in *S. Selvarani v. The Commissioner, Karaikudi Municipality* : (2005)1MLJ394 and *D.C.W. Limited v. The State of Tamil Nadu* 2005 W.L.R. 93. But these cases have no relevance to the issue on hand. While one of these cases arose out of a public auction conducted in respect of a right to collect rent from road side vendors, the other case arose out of the grant of lease of land for manufacture of salt. In the case of hand, there was no violation of Article 14 of the Constitution, since the appellants have been granted regular time scales of pay on par with Government school teachers, after the sanction of grant-in-aid and after the sanction of their posts. Therefore, these judgments have no application.

39. Lastly it was contended that the order impugned in the writ petition, G.O.Ms. No. 314 Education dated 12.11.1999 was based only upon G.O.Ms. No. 439 dated 5.5.1993 and that therefore, the justification now sought to be provided by the respondents, by relying upon various Government Orders and statutory provisions, should not be accepted. In support of such a contention, the learned senior counsel relied upon a Constitution Bench judgment of the Supreme Court in *Mohinder Singh Gill and Anr. v. The Chief Election Commissioner, New Delhi and Ors.* : [1978]2SCR272 , wherein it was held that the validity of an order passed by a statutory functionary should be judged only by the reasons contained in the order and they cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. That was a case arising out of an order passed by the Election Commission. Here we are concerned with the orders passed by administrative authorities and not a 'statutory functionary' and hence the said judgment does not apply to the case on hand.

40. For all the above reasons, we find no merits in the appeals. Consequently all the appeals are dismissed. No Costs. Consequently connected WAMPs are also dismissed.