

U.A.inniah. Vs. the Correspondent

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Court : Chennai

Decided On : Jul-03-2012

Judge : R.Sudhakar, J.

Acts : [Constitution of India](#) - Articles 226, 12

Appeal No. : W.P.Nos. 4509 to 4512 of 2010

Appellant : U.A.inniah

Respondent : The Correspondent

Advocate for Def. : Mr. FR.A.Xavier Arulraj, Adv.

Advocate for Pet/Ap. : Mr. TK . Bhaskar, Adv

Judgement :

Prayer: Petitions filed under Article 226 of the [Constitution of India](#) to issue a Writ of Mandamus directing the respondent to consider the representation dated 11.2.2010 & 10.2.2010 respectively within such time frame as may be stipulated.

COMMON ORDER

1. These writ petitions are filed to issue a Writ of Mandamus directing the respondent to consider the representation dated 11.2.2010 & 10.2.2010 respectively within such time frame as may be stipulated.

2. Four writ petitions have been filed for a Mandamus to consider the respective representation of the individual and grant them the benefit of Government scale of pay and the benefit of the recommendations of the 6th Pay Commission.

3. The respondents filed counter affidavit objecting to the filing of the writ petition for a Mandamus as above stating that the relief sought for in the representation by all these writ petitioners cannot be granted as the respondent's school is unaided private minority school and therefore, it would not come within the meaning of Article 12 of the [Constitution of India](#) and there is no provision of law, which mandates the respondent to grant scale of pay on par with the Government or aided school and therefore, the Mandamus as sought for cannot be granted.

4. Reliance is placed on the decision in SATIMBLA SHARMA AND OTHERS Vs. - ST. PAUL'S SENIOR SECONDARY SCHOOL AND OTHERS reported in (2011, 8, MLJ 554) and the relevant portion in paragraphs 9 and 11 reads as follows:-

" 9. In our considered opinion, the Division Bench of the High Court has rightly held in the impugned judgment that the teachers of private unaided minority schools had no right to claim salary equal to that of their counter-parts working in Government Schools and Government aided schools. The teachers of Government aided schools are paid mostly out of the Government funds, whereas the teachers of private unaided minority schools are paid out of the fees and other resources of the private schools. More over, unaided private minority schools over which the Government has no administrative control because of their autonomy under Article 30(1) of the Constitution are not State within the meaning of Article 12 of the Constitution. As the right to equality under Article 14 of the Constitution is available against the State, it cannot be claimed against unaided private minority schools. Similarly, such unaided private schools are not State within the meaning of Article 36 read with Article 12 of the Constitution and as the obligation to ensure equal pay for equal work in Article 29(d) is on the State, a private unaided minority school is not under any duty to ensure equal pay for equal work".

"11. We also do not think that the Court could issue a mandamus to a private unaided school to pay the salary and allowances equal to the salary and allowances payable to teachers of Government schools or Government aided

schools. This is because the salary and allowances of teachers of a private unaided school is a matter of contract between the school and the teacher and is not within the domain of public law. In *Sushmita Basu and Others V. - Ballygunge Siksha Samity and Others* (2006) 7 SCC 680: LNIND 2006 SC 758, the teachers of a recognized private school known as Ballygunge Siksha Sadan in Calcutta filed a writ petition in the High Court of Calcutta praying for issuance of writ of Mandamus directing the authorities of the school to fix the salary of teaching and non-teaching staff of the school and to remove all anomalies in the scales of pay as recommended by the Third Pay Commission as extended to other Government aided schools and Government Schools and this Court held that in the absence of statutory provision no such directing can be issued by the High Court under Article 226 of the Constitution. Where a statutory provision casts a duty on a private unaided school to pay the same salary and allowances to its teachers as are being paid teachers of Government aided schools, then a writ of mandamus to the school could be issued to enforce such statutory duty. But in the present case, there was no statutory provision requiring a private unaided school to pay to its teachers the same salary and allowances as were payable to teachers of Government Schools and therefore, a mandamus could not be issued to pay to the teachers of private recognized unaided schools the same salary and allowances as were payable to Government institutions."

5. The learned counsel for the petitioner relied upon the paragraph 14 of the above said decision to state that the condition of service of the petitioners should be treated on par with the Government or aided school teachers and staff on the plea that equal work requires equal pay. Para-14 of the above said decision reads as follows:-

" 14. We, however, find that the 2009 Act has provisions in Section 23 regarding the qualifications for appointment and terms and conditions of service of teachers and sub-section (3) of Section 23 of the 2009 Act provides that the salary and allowances payable to, and the terms and conditions of service of teachers shall be such as may be prescribed. Section 38 of the 2009 Act empowers the appropriate Government to make Rules and Section 38(2)(1) of the 2009 Act provides that the appropriate Government, in particular, may make rules

prescribing the salary and allowances payable to, and the terms and conditions of service of teachers, under sub-section (3) of Section 23. Section 2(a) defines "appropriate Government" as the State Government within whose territory the school is established. The state of Himachal Pradesh, respondent No.3 in this appeal, is thus empowered to make rules under sub-section 3 of Section 23 read with Section 38(2)(1) of the 2009 Act prescribing the salary and allowances payable to, and the terms and conditions of service of teachers. Article 39(d) of the Constitution provides that the State shall, in particular, direct its policy towards securing that there is equal pay for equal work for both men and women. Respondent No.3 should therefore consider making rules under Section 23 read with Section 38(2)(1) of the 2009 Act prescribing the salary and allowances of teachers keeping in mind Article 39 (d) of the Constitution as early as possible."

Paragraph-14 of the above decision clearly holds that the Government should consider making appropriate Rules in this regard.

6. In the absence of specific Rules as above and para 11 of the Apex Court decision as set out above, the petitioner cannot plead for a Mandamus to grant pay on parity with that of the teachers of Government or aided school. In view of the above, the relief sought for in the writ petitions is not maintainable in law. Accordingly, the writ petitions are dismissed. No costs.

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