

A THE CHANDIGARH ADMINISTRATION AND ORS.

v.

MRS. RAJNI VALI AND ORS.

JANUARY 12, 2000

B [S. RAJENDRA BABU AND D.P. MOHAPATRA, JJ.]

C *Constitution of India, 1950—Articles 14, 21, 39(d), 41 and 45—Right to Education—Duty of State—Financing of privately managed recognised aided schools—Constitutional mandate that the State shall ensure proper education to the students on whom the future of the society depends.*

D *Service Law—"Equal pay for equal work"—Teachers of educational institutions getting Grant-in-aid—State Administration cannot shirk its responsibility of ensuring proper education in schools and colleges on the plea of lack of resources—It is for the authorities running the Administration to find out the ways and means of securing funds for the purpose—Directions issued by High Court for parity in payscales—Upheld.*

E Respondents 1 to 12, lecturers teaching different subjects in the 11th and 12th classes of a private educational institution filed a writ petition against the appellants viz. Chandigarh Administration, Director of Public Instruction (School) and the Managing Committee of the school for a direction that they should be paid the same salary and dearness allowance as their counter- parts working in other private recognised aided schools in Chandigarh and that the expenses so incurred be apportioned by the F Union Territory Administration and the School Management in the ratio of 95% and 5% as is done between the State Governments and Management of Institution Aided Schools.

G This claim for parity of salary was contested on the ground that permission to open the 11th and 12th classes in the instant school was subject to the condition that no grant-in-aid would be provided for the additional staff. The High Court, however, allowed the writ petition and directed that the writ petitioners be paid the same salary as their counter parts in the privately managed government aided schools in Chandigarh and the expenses so incurred be apportioned by the Chandigarh Ad- H ministration and the Management in the ratio of 95% and 5% respectively.

Aggrieved, the Appellants appealed to this Court.

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Dismissing the appeal, the Court

HELD : 1. 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 institutions 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 a class of institutions. [163-A-D]

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2. The undisputed factual position that emerges from the material on record is that the school was established after receiving permission from the competent authority of the U.T. Administration, the institution was recognised by the Administration, upgraded to a Higher Secondary School and 11th and 12th classes started with the permission of the competent authority. The institution was receiving grant-in-aid since December 1967 from the Administration. Respondents 1 to 12, lecturers teaching different subjects were appointed by the Management under the Recruitment Rules. It is not the case of the Appellants that the Higher Secondary classes constitute a separate and independent institution, that the posts held by respondents 1 to 12 are not necessary for running the Higher Secondary Classes and are surplusage in the institution; but the respondents were appointed after November 30, 1967 and are not entitled to the benefit of salary under the Grant-in-aid Scheme. [162-E-H]

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3. Tested on the touchstone of the principles laid down in the earlier decisions, the position is manifest that there is no justification for denying the claim of the respondents for parity of pay scale. [164-E]

4. The High Court has, rightly rejected the case of the appellants.

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A The directions issued by it for parity in pay scale are unassailable. [164-F]

B 5. The State Administration cannot shirk its responsibility of ensuring proper education in schools and colleges on the plea of lack of resources. It is for the Authorities running the Administration to find out the ways and means of securing funds for the purpose. The contention that the Chandigarh Administration cannot bear the additional financial burden has, therefore, to be rejected. [164-G-H; 165-A]

C 6. However, it is clarified that the proportion in which the additional burden will be shared by the Chandigarh Administration and the Management of the school will be in accordance with the Grant-in-aid Scheme applicable to the schools from time to time. [165-A-B]

D *Haryana State Adhyapak Sangh & Ors. Etc. v. State of Haryana & Ors. Etc.*, AIR (1988) SC 1663; *Haryana State Adhyapak Sangh & Ors. v. State of Haryana & Ors.*, AIR (1990) SC 968; *State of Maharashtra v. Mannubhai Pragati Vashi & Ors.*, JT (1995) 6 SC 119 and *State of Haryana & Anr. v. Ram Chander & Anr.*, [1997] 5 SCC 253, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 12921 of 1996.

E From the Judgment and Order dated 1.12.95 of the Punjab & Haryana High Court in C.W.P. No. 14612 of 1993.

Ms. Kamini Jaiswal, (K.B. Rohtagi) (N.P.) for the appellants.

F K.P. Bhandari, V.C. Mahajan, P. Bhandari, (Himinder Lal) (Caveator) and Ms. Varuna Bhandari Gugnani for Respondents Nos. 1-12.

Ex-Parte for Respondent Nos. 13-14.

The Judgment of the Court was delivered by

G **MOHAPATRA, J.** Dev Samaj Girl Senior Secondary School, Chandigarh is a private educational institution duly recognized and receiving grant-in-aid from the Union Territory of Chandigarh Administration since 1.12.1967. Initially the school was imparting education upto class 10. In the year 1988, it was decided to start 10 + 1 and 10 + 2 classes in the school and
H upgrade it to senior secondary level. The Director of Public Instructions,

Union Territory, Chandigarh granted permission to the management for starting 11th and 12th classes in Humanities and Commerce, with a condition that no grant-in-aid will be provided for any additional staff. The classes were started on the recommendation of the Director of Public Instruction. The institution was granted affiliation by the Board of Secondary Education, New Delhi, with effect from 1.5.1998. The corresponding classes in Dev Samaj Degree College, Chandigarh, were closed on the decision of the Chandigarh Administration that education in such classes would be given in schools. The respondents 1 to 12 are lecturers who are teaching different subjects in 11th and 12th classes of the school. When their request for grant of salary at par with their counter parts working in privately managed recognised aided schools in Chandigarh was not heeded to by the Chandigarh Administration, they filed a writ petition in the High Court of Punjab and Haryana seeking *inter alia* a writ of mandamus directing the respondents i.e. the Chandigarh Administration, its Finance Secretary, its Director of Public Instructions (School) and the Managing Committee of the School, to pay the same salary and dearness allowance to the petitioners which is being paid to their counter parts working in private recognised aided schools in Chandigarh, especially when the other members of the staff/teachers teaching upto 10th class are receiving the scales sanctioned for the posts against which they are working. The respondents also prayed that the expenses so incurred should be apportioned by the Chandigarh Administration and the Management of the institution in the ratio of 95% and 5% as is being done between the State Government and Management of the Institution Aided Schools.

The claim of the respondents was refuted by the appellants mainly on the ground that permission to open the 11th and 12th classes in the school was subject to the condition that no grant-in-aid will be provided for additional staff and therefore the claim of the respondents for parity of salary with their counter parts in other aided institutions cannot be accepted.

The High Court, on consideration of the case of the parties and the contentions raised on their behalf allowed the writ petition and directed the respondents who are appellants herein to pay the same salary to the petitioners/respondents 1 to 13 herein, which is being paid to their counter parts in the privately managed government aided schools in Chandigarh and the expenses so incurred be apportioned by the Chandigarh Ad-

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A ministration and the Management in the ratio of 95% and 5% respectively. The judgment of the High Court is under challenge in this appeal filed by Chandigarh Administration through Secretary, Education, its Finance Secretary and the Director of Public Instructions, (School).

B From the discussion in the impugned judgment it appears that the writ petitioners pressed their claim mainly on the principle of equal pay for equal work. They also made a grievance about discriminatory treatment meted out to them by the Chandigarh Administration and the Management. The appellants on the other hand refuted the claim, as noted earlier, on the ground of conditional grant of permission to open the higher secondary classes and paucity of funds to meet the additional burden in case the prayer in their writ petition is allowed. Substantially, the same position was repeated during the hearing of the case in this court. The learned counsel for the appellants further submitted that under the rules governing grant in aid, the staff position of the aided institutions as on 30th of November, 1967, has been frozen; since all the respondents were appointed subsequent to that date, they are not entitled to salary at par with teachers of other aided schools, who were in service by the cut off date.

E The undisputed factual position which emerged from the materials on record is that the school was established after receiving permission from the competent authority of the Chandigarh Administration; the institution is duly recognized by the Administration; the institution was upgraded to a Higher Secondary School and 11th and 12th classes were started with the permission of the Competent Authority; that the subjects of Humanities stream and Commerce stream were also decided by the Competent Authority; the institution has been receiving grant-in-aid from the State Government (Chandigarh Administration) since December, 1967; respondents 1 to 12 are Lecturers teaching in different subjects in other Classes 11th and 12th and the respondents were appointed by the Management under the Recruitment Rules. It is not the case of the appellants that the Higher Secondary Classes constitute a separate and independent institution. It is also not their case that the posts held by the respondents 1 to 12 are not necessary for running the Higher Secondary Classes and they are surplusage in the institution. As noted earlier, their objection is that, since the said respondents were appointed after 30th November, 1967, they are not entitled to the benefit of salary under the Grant-in-aid Scheme.

The position has to be accepted as well-settled that 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 a class of institutions. To notice a few such decisions on the point, we may refer to the case of *Haryana State Adhyapak Sangh & Ors. Etc. v. State of Haryana & Ors. Etc.*, AIR (1988) SC 1663, in which this Court issued a direction that the State Government will also take up with the Management of the aided schools the question of bringing about parity between the teachers of aided schools and the teachers of Government schools for the period following that to which the thirty five instalments relate, so that a claim for payment may be evolved after having regard to the different allowances claimed by the petitioners. In the case of *Haryana State Adhyapak Sangh & Ors. v. State of Haryana & Ors.*, AIR (1990) SC 968, a Bench of three learned Judges of this Court clarifying the judgment in *Haryana State Adhyapak Sangh & Ors. v. State of Haryana & Ors. Etc.*, (supra), issued a direction, *inter alia*, that the parity in the pay scales and dearness allowance of teachers employed in aided schools and those employed in Government schools shall be maintained and with that end in future the pay scales of teachers employed in Government schools shall be revised and brought at par with the aided schools and dearness allowance payable to the teachers employed in Government schools with effect from January 1st, 1986.

In the case of *State of Maharashtra v. Mannubhai Pragati Vashi & Ors.*, JT (1995) 6 SC 119, this Court held that the decision of the Government of Maharashtra not to extend the Grant-in-aid Scheme to private law colleges was discriminatory and this Court directed the State of Maharashtra to extend the Grant-in-aid Scheme to all recognized private

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A law colleges on the same criteria as such grants are given to other Faculties, namely, Arts, Science, Commerce, Engineering and Medicine from the academic year 1995.

B In the case of *State of Haryana and Anr. v. Ram Chander & Anr.*, [1997] 5 SCC 253, this Court considered the case of language teachers in the Haryana Government Vocational Education Institute, who taught Hindi and English to 11th and 12th standard students in the Institute, that they should be given parity in pay scale with the teachers who taught 11th and 12th standard students in Higher Secondary Schools who were designated Lecturers. This Court upheld the judgment of the High Court C granting parity of scale of pay to the aggrieved teachers on the finding, *inter alia*, that whether the teachers teaching Hindi and English languages to 11th and 12th standard students in a technical institution or in a Higher Secondary School makes no difference in the nature of duties and functions performed by these two sets of papers when they teach the same syllabus of Hindi and English to 11th and 12th standard students who appear at the D same type of examination and write the same papers as were written by 11th and 12th standard students who are taught Hindi and English in Higher Secondary Schools.

E Tested on the touchstone of the principles laid down in the aforementioned decisions, the position is manifest that there is no justification for denying the claim of the respondents for parity of pay scale and to accept the contention of the appellants will amount to confirming the discriminatory treatment against the respondents. Therefore, the High Court rightly rejected the case of the appellants. The directions issued in F the impugned Judgment to pay the respondents 1 to 12 the same salary as is being paid to their counter parts in the privately managed Government aided schools in Chandigarh in the circumstances is unassailable.

G Coming to the contention of the appellants that the Chandigarh Administration will find it difficult to bear the additional financial burden if the claim of the respondents 1 to 12 is accepted, we need only say that such a contention raised in different cases of similar nature has been rejected by this Court. The State Administration cannot shirk its responsibility of ensuring proper education in schools and colleges on the plea of lack of resources. It is for the Authorities running the Administration to H find out the ways and means of securing funds for the purpose. We do not

deem it necessary to consider this question in further detail. The contention raised by the appellants in this regard is rejected. It is, however, clarified that the proportion in which the additional burden will be shared by the Chandigarh Administration and the Management of the school will be in accordance with the Grant-in-aid Scheme applicable to the school from time to time. The judgment of the High Court that the sharing of the financial burden will be in the ratio of 95% to 5% is modified accordingly.

With the above modification, the appeal is dismissed, but in the circumstances of this case, without any order for costs.

P.K.S.

Appeal dismissed.