

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 431 OF 2010

Certified to be true Copy
Advocates
Assistant Registrar (Judt)
07/03/2024
Supreme Court of India

RAMKRISHAN ASHRAM & ORS.

Appellants

VERSUS

267447

SHASHWAT PANDEY & ORS.

Respondents

(For full cause title and details of the Court appealed from
please see Schedule 'A' attached herewith)

Dated: 01-09-2022

This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE SUDHANSHU DHULIA

For Appellants

Dr. Nirmal Chopra, AOR

For Respondents

Ms. Christi Jain, Adv.
Mr. Puneet Jain, Adv.
Mr. Umang Mehta, Adv.
Mr. Yogit Kamat, Adv.
Ms. Shruti Singh, Adv.
Mr. M. Arora, Adv.
Ms. Shipra Singh, Adv.
Ms. Pratibha Jain, AOR

Mr. Devashish Bharuka, Adv.
Mr. P.V. Yoheswaran, Adv.
Mr. Shashank Bajpai, Adv.
Mr. Bhuvan Mishra, Adv.
Mr. A. Kumar, Adv.
Mr. R.R. Rajesh, Adv.
Mrs. Anil Katiyar, AOR

Mr. Atul Kumar, AOR
Ms. Sweety Singh, Adv.
Mr. Rahul Pandey, Adv.

Mr. Rupesh Kumar, AOR
Ms. Neelam Sharma, Adv.
Ms. Pankhuri Shrivastava, Adv.
Mr. Rajeev Sharma, Adv.

The Appeal above-mentioned being called on for hearing before this Court on the 01st day of September, 2022, UPON perusing the record and hearing counsel for the appearing parties above-mentioned, THIS COURT DOTH PASS the following ORDER :

“1. The challenge in the present appeal is to a judgment dated 17.1.2008 passed by the High Court of Madhya Pradesh, Gwalior Bench, whereby the Writ Appeal preferred by the teachers was allowed directing the appellants to pay the pay scales as per the norms prescribed by the Central Board of Secondary Education.

2. The stand of the appellants before the High Court was that the respondents were working on contract basis and, therefore, the norms fixed by the Central Board of Secondary Education, will not be applicable as it is applicable to the regularly appointed teachers. Such fact could not be controverted by the learned counsel for the respondents.

3. In view of the above, the present appeal is allowed on the short question that the respondents are not entitled to the regular pay scale in a school affiliated to the Central Board of Secondary Education.

4. Thus, the appeal is allowed and the impugned judgment of the High Court is set aside.”

AND THIS COURT DOTH FURTHER ORDER that interim orders, if any, unless otherwise directed stand merged in the final decision;

AND THIS COURT DOTH LASTLY ORDER that this ORDER be punctually observed and carried into execution by all concerned;

WITNESS the Hon'ble Shri Uday Umesh Lalit, Chief Justice of India, at the Supreme Court, New Delhi, dated this the 01st day of September, 2022.

SC
(CHARANJEET KAUR)
DEPUTY REGISTRAR

SC

CA 431/10

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Schedule - 'A'

IN THE SUPREME COURT OF INDIA

ORDER XVI RULE 4(1)(A)

CIVIL APPELLATE JURISDICTION

UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA

SPECIAL LEAVE PETITION (CIVIL) NO. 9908 OF 2008

WITH PRAYER FOR INTERIM RELIEF

BETWEEN

POSITION OF PARTIES
High Court In this Court

- 1. Ramkrishan Ashram Through its Secretary Thatipur, Gwalior Respondent No.5 Petitioner No.1
- 2. Secretary, Ramkrishan Ashram Thatipur, Gwalior Respondent No.6 Petitioner No.2
- 3. Principal Ramkrishan Vidya Mandir (C.B.S.E) Ramkrishanpuri Gwalior Respondent No.7 Petitioner No.3

VERSUS

- 1. Shashwat Pandey S/o Sh. R.K. Pandey Aged - 33 years Occupation: Post Graduate Teacher (PGT) Ramkrishan Vidya Mandir R/o 29, Anupam Nagar University Road, Gwalior Petitioner No.1 Respondent No.1
- 2. Smt. Sunita Saxena W/o Sh. Vijay Saxena Aged - 34 years Occupation: Post Graduate Teacher (PGT) Ramkrishan Vidya Mandir R/o 82, Saraswati Nagar University Road, Gwalior Petitioner No.2 Respondent No.2
- 3. Sunil Dewedi S/o Sh. J.N. Dewedi Aged - 37 years Occupation: Post Graduate Teacher (PGT) Ramkrishan Vidya Mandir R/o 304, Shree Nath Apartment Balwant Nagar, Gwalior Petitioner No.3 Respondent No.3
- 4. Rakesh Saxena S/o Sh. Ganesh Saxena Aged - 29 years Petitioner No.4 Respondent No.4

INDIA

11

MOST

Occupation: Post Graduate Teacher (PGT)
Ramkrishan Vidya Mandir
R/o 85, Saraswati Nagar
Gwalior

5 ✓ Pawanveer Singh Jadon ← Petitioner No.5 Respondent No.5
S/o Sh. Rajendra Pal Singh Jadon
Aged - 31 years
Occupation: Trade Graduate Teacher (TGT)
Ramkrishan Vidya Mandir
R/o Near Adarsh Mill
Vinay Nagar, Gwalior

6 ✓ Smt. Nandni Kulshrestha ← Petitioner No.6 Respondent No.6
W/o Sh. S.K. Kulshrestha
Aged - 32 years
Occupation: Trade Graduate Teacher (TGT)
Ramkrishan Vidya Mandir
R/o C-32. Govindpuri
University Road, Gwalior

7 ✓ Smt. Shubha Shree Sathe ← Petitioner No.7 Respondent No.7
W/o Sh. Praveen Sathe
Aged - 32 years
Occupation: Post Graduate Teacher (PGT)
Ramkrishan Vidya Mandir
R/o Aapte Ki Payga,
Nai Sadak, Gwalior

8. Union of India ← Respondent No.1 Respondent No.8
Through its Secretary
Human Resource Development
Mantralaya, Shastri Bhawan
New Delhi

9. State of M.P., ← Respondent No.2 Respondent No.9
Through Secretary
School Education Department
Mantralaya Vallabh Bhawan
Bhopal (M.P.)

10. Regional Provident ← Respondent No.3 Respondent No.10
Commissioner
Sanjay Complex,
Jayendragunj, Lashkar
Gwalior

11. Central Board of Secondary ← Respondent No.4 Respondent No.4-
Education
Through Secretary
Education Centre - 2
Community Centre, Preet Vihar,
Vikas Marg, Delhi

TO,
THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUSTICES OF THE
SUPREME COURT OF INDIA

The Humble Petition of the
Petitioner above named: -

MOST RESPECTUFLLY SHEWETH:

1. The Petitioner is filing the instant Special Leave Petition in this Hon'ble Court against the impugned Order dated 17.01.2008 passed by the Hon'ble Division Bench of High Court of Judicature of Madhya Pradesh at Jabalpur, Bench at Gwalior in Writ Appeal No. 73 of 2007.

2. QUESTIONS OF LAW:

The important questions of law that arise for determination in the present case are enumerated below: -

- A. Whether a writ can be issued directing a non-statutory charitable trust managing unaided school to grant salaries to its academic staff at par with the salaries of the teachers employed in Central and State educational institution?
- B. Whether guidelines issued by a non-statutory body Central Board of Secondary Education are binding?
- C. Whether a writ court would be the appropriate forum for taking action for alleged violation of norms for affiliation formulated by CBSE, if any?
- D. Whether unequals can be treated equally on the ground of equal pay for equal work alone?
- E. Whether the Hon'ble Division Bench was justified in arriving to the conclusion that even if the principle of "Equal pay for equal work" does not apply in the present case, still the teachers are entitled to get salary in accordance with the norms fixed by the Central Board of Secondary Education?

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 431 OF 2010

RAMKRISHAN ASHRAM & ORS.

Appellants

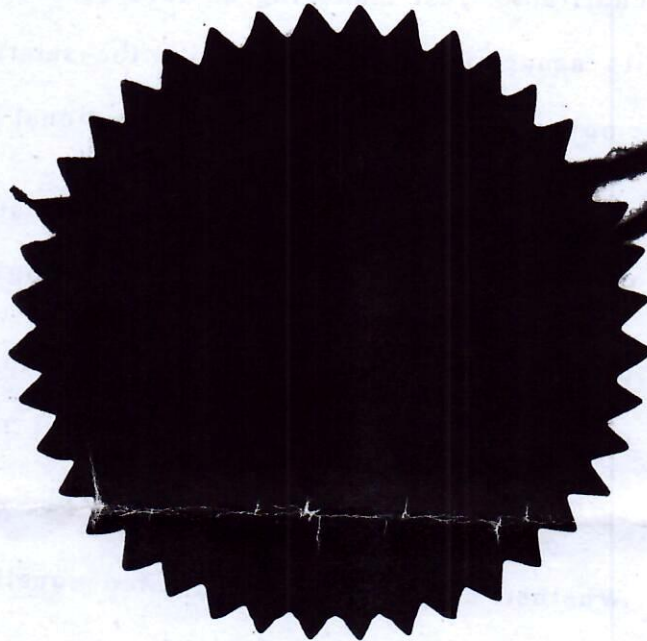
VERSUS

SHASHWAT PANDEY & ORS.

Respondents

DECREE ALLOWING THE APPEAL.

Dated this the 01st day of September, 2022.



SEALD IN MY PRESENCE

Dr. Nirmal Chopra,
Ms. Pratibha Jain,
Mrs. Anil Katiyar,
Mr. Atul Kumar,
Mr. Rupesh Kumar,
Advocates on Record for the
appearing parties.

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO.431/2010

RAMKRISHAN ASHRAM & ORS.

Appellant(s)

VERSUS

SHASHWAT PANDEY & ORS.

Respondent(s)

O R D E R

1. The challenge in the present appeal is to a judgment dated 17.1.2008 passed by the High Court of Madhya Pradesh, Gwalior Bench, whereby the Writ Appeal preferred by the teachers was allowed directing the appellants to pay the pay scales as per the norms prescribed by the Central Board of Secondary Education.

2. The stand of the appellants before the High Court was that the respondents were working on contract basis and, therefore, the norms fixed by the Central Board of Secondary Education, will not be applicable as it is applicable to the regularly appointed teachers. Such fact could not be controverted by the learned counsel for the respondents.

3. In view of the above, the present appeal is allowed on the short question that the respondents are not entitled to the regular pay scale in a school affiliated to the Central Board of Secondary Education.

4. Thus, the appeal is allowed and the impugned judgment of the High Court is set aside.

Signature Not Verified
Digitally signed by
VISHAL ANAND
Date: 2022.09.06
18:41:00 IST
Reason: 

.....J
(HEMANT GUPTA)

.....J
(SUDHANSHU DHULIA)

**NEW DELHI;
1ST SEPTEMBER, 2022**

ITEM NO.101

COURT NO.7

SECTION IV-C

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G SCivil Appeal No.431/2010

RAMKRISHAN ASHRAM & ORS.

Appellant(s)

VERSUS

SHASHWAT PANDEY . & ORS.

Respondent(s)

Date : 01-09-2022 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE SUDHANSHU DHULIA

For Appellant(s)

Dr. Nirmal Chopra, AOR

For Respondent(s)

Ms. Christi Jain, Adv.

Mr. Puneet Jain, Adv.

Mr. Umang Mehta, Adv.

Mr. Yogit Kamat, Adv.

Ms. Shruti Singh, Adv.

Mr. M. Arora, Adv.

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Ms. Pratibha Jain, AOR

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Mr. Shashank Bajpai, Adv.

Mr. Bhuvan Mishra, Adv.

Mr. A. Kumar, Adv.

Mr. R.R. Rajesh, Adv.

Mrs. Anil Katiyar, AOR

Mr. Atul Kumar, AOR

Ms. Sweety Singh, Adv.

Mr. Rahul Pandey, Adv.

Mr. Rupesh Kumar, AOR

Ms. Neelam Sharma, Adv.

Ms. Pankhuri Shrivastava, Adv.

Mr. Rajeev Sharma, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal is allowed and the impugned judgment of the High Court is set aside, in terms of the signed order.

(VISHAL ANAND)
ASTT. REGISTRAR-cum-PS

(RENU BALA GAMBHIR)
COURT MASTER (NSH)

(Signed Order is placed on the file)

4
Writ Appeal No.73/07

HIGH COURT OF JUDICATURE OF MADHYA PRADESH
JABALPUR
BENCH AT GWALIOR

Writ Appeal No.73 of 2007

Shashwat Pandey and others
VS
Union of India and others

**DIVISION BENCH : HON.MR. JUSTICE S.SAMVATSAR, AND
HON.MR. JUSTICE S. A.NAQVI.**

Sarvashri R.D.Jain, Senior Advocate with Arvind Dudawat and DPS Bhadoriya, Advocate for the appellants petitioners.

Respondent No.1 by Shri V.K.Sharma, Assistant Solicitor General.

Respondents 5 to 7 by Shri MPS Raghuvanshi, Advocate.

J u d g m e n t
(Delivered on 17 day of January, 2008)

S.Samvatsar,J.-

This writ appeal is filed by the appellants under Section 2 (1) of the M.P.Uchcha Nyayalaya (Khand Nyaya Peeth Ko Appeal) Adhiniyam, 2005 being aggrieved by the order dated 14/11/2006 passed by the learned single Bench of this Court in Writ Petition (S) No.933/04.

2. Brief facts of the case are that the appellants petitioners are appointed as teachers in the school namely Ramkrishna Vidya Mandir, run by respondents 5,6 and 7. Said school is recognised and affiliated to Central Board of Secondary Education (CBSE). According to the appellants, the affiliation is granted to the said school on the norms fixed for the said purpose. As per condition No. According to clause 3

(vi) of the Norms for Affiliation, the school must pay salaries and admissible allowances to the staff not less than the corresponding categories of employees in the State Government school or as per scales etc prescribed by the Government of India.

3. Thus, the contention of the appellants is that they must be paid salary as per the norms prescribed by the Government of India. Hence, they filed writ petition before the single Bench praying for a relief of fixation of their salary in accordance with the norms fixed by the Central Board of Secondary Education as a condition for granting affiliation.

4. Respondents filed their return before the writ court *inter alia* contending that the writ petition against respondents 5 to 7 is not maintainable as they are not covered by the definition of the "State" under Article 12 of the Constitution of India. Second contention raised by the respondents is that appointments of the petitioners are merely stop-gap arrangement and they are not regularly appointed after following the rules. Clause 25 of the Norms prescribed by Central Board of Secondary Education itself provides a procedure for appointment. Contention of the respondents is that these persons were not appointed after following the said procedure, therefore, they are not entitled to fixation of their salary as per clause 3 (vi). It is also contended that the principle "Equal pay for equal work" will not apply in the present case considering the fact that the petitioners are not regularly appointed teachers.

5. The writ court after hearing the parties has held that the petition against respondents 5 to 7 is maintainable. The writ court found that the norms laid down by the Central Board of Secondary Education have no statutory force and cannot be enforced by the Court. Writ Court also found that in the absence of binding rules, the petitioners are not entitled to get their pay scales fixed on the basis of the principle "Equal pay for equal work" as the procedure for appointment in the school and

private school is quite different. The service conditions of the petitioners are also different and therefore, the writ court relying on a judgment of the Apex Court in the case of M.P. Rural Agriculture Extension Officers Association vs. State of M.P. and another. (2004) 4 SCC 646 has dismissed the writ petition, hence, this appeal.

6. First contention raised by the counsel for the appellants-petitioners is that Annexure A/1 annexed with the writ petition which are norms fixed by the Central Board of Secondary Education have binding effect and therefore, the appellants petitioners are entitled to get the same pay scales. For this purpose, counsel for the appellants has relied upon the judgment of the Apex Court in the case of K. Krishnamacharyulu and others vs. Sri Venkateshwara Hindu College of Engineering and another (1997) 3 SCC 351 and Vidya Dhar Pandey vs. Vidyut Grih Shiksha Samiti, AIR 1989 SC 341.

7. In reply to this argument, counsel for the respondents has relied upon the judgment of the Apex Court in the case of Aligarh Muslim University and others vs. Mansoor Ali Khan, (2000) 7 SCC 529 wherein the Apex Court has held that unless there are violation of statutory rules, no writ of *mandamus* can be issued. He has also relied upon a judgment of the Apex Court in the case of State of Haryana vs. Charanjit Singh, AIR 2006 SC 161 wherein the Apex court has considered the principle "Equal pay for equal work" and contended that where there is a difference in the procedure of appointment and service conditions are different, the principle of "Equal pay for equal work" will not be applicable. Counsel for the respondents also contended that in case of public employment where the appointments are *de hors* the rules, an employee does not get any right to the post. For this purpose, he has relied upon a judgment of the Apex Court in the case of Secretary State of Karnataka vs. Umadevi and others. (2006) 4 SCC 1.

8. After hearing counsel for the parties, we find that in the

present case, the institution is affiliated to the Central Board of Secondary Education since 1998. There are 35-40 teachers working in the said institution. Contention of the appellants petitioners in this case is that all these teachers were initially appointed on contract basis, but subsequently, some of the employees are regularised on their posts and some of them are promoted to the higher post on regular pay-scales and they are fixed on regular pay scales. For this purpose, counsel for the appellants has invited attention of this Court to document Annexure P/4 with the writ petition which shows that one Pramod Kumar Barua is getting basic pay of Rs.2600/- plus HRA Rs.600, plus medical Rs.300, plus conveyance Rs.300/-, thus his gross salary is fixed at Rs.3800/- per month. In the said certificate, it is mentioned that he is working as permanent PGT in English. Similarly Annexure P/3 with the writ petition shows that Mr. Shashwat Pandey is working as Physical Education Teacher and his salary is fixed as Rs.2075 as basic pay plus Rs.600 as HRA, plus Rs.300 as medical plus Rs.300/-, thus his gross salary is Rs.3275/-. Similarly, Annexure P/5 with the writ petition shows that Mrs. Sunita Saxena is working in the institution as a permanent Biology PGT since 1999 and her salary is Rs.2500/- as basic plus Rs.600 as HRA, plus Rs.300 as medical plus Rs. 300 as conveyance, thus her total salary is Rs.3700/- per month. Similar is the situation with some other employees also. These certificates show that some of the teachers are treated to be permanent employees by the respondents and some of them were granted promotion to the higher post.

9. Respondents, however, denied this fact in their return and stated that none of these employees is appointed in accordance with the rules and none of them is regularised. Contention of the respondents is that all these persons were appointed on contractual basis.

10. Thus, it appears that the the school was affiliated in the year 1997 on the condition of fulfilling the norms prescribed by the Central Board of Secondary Education and one of the norms is that they will fix

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salary of the teachers in accordance with clause 3 (vi) of the Norms for Affiliation. These norms are not at all followed by the institution. Instead of appointing teachers in accordance with clause 25 of Service Rules for employees Chapter VII, they are appointing persons on contractual basis and thus, they are not fulfilling the norms prescribed by the Central Board of Secondary Education.

11. So far as the guidelines issued by Central Board of Secondary Education are concerned, even if they have no statutory force, yet the respondent institution cannot refuse to follow them on the ground that they have no statutory force, particularly when the institution is getting its affiliation in pursuance of the condition of complying with the norms prescribed by the Central Board of Secondary Education. In such a situation, the respondent Institution cannot refuse to fix the salary in accordance with the norms fixed by the Central Board of Secondary Education. The principle of "Equal pay for equal work" does not apply in the present case, still, the teachers are entitled to get salary in accordance with the norms fixed by the Central Board of Secondary Education.

12. So far as contention of the respondents that the appellants petitioners are not regularised on their posts and they are not appointed in accordance with the norms fixed by the Central Board of Secondary Education is concerned, that is without any merit because, it appears that some of the teachers are treated as regular employees of the respondent institution. In such circumstances, those employees who are regularised by the respondents are entitled to get their salary fixed in accordance with the norms fixed by the Central Board of Secondary Education as already pointed out that out of 35- 40 teachers, some of the teachers are appointed on permanent basis.

13. In such circumstances, the respondents are directed to make regular appointments on the posts on which teachers appointed on contract basis are working and pay them salary as per the norms fixed

Writ Appeal No. 73/07

by the Central Board of Secondary Education. But so far as the employees who are already regularized by the respondents, they are entitled to pay scale as per the norms prescribed by the Central Board of Secondary Education (CBSE).

14. With this direction, this appeal stands allowed in part.

(S, SAMVATSAR)
JUDGE
17/1/2008

(S.A. NAQVI)
JUDGE
17/1/2008

*"True Copy"
Attomal Chavris adn*

ANNEXURE-P 19

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HIGH COURT OF MADHYA PRADESH JABALPUR BENCH
AT GWALIOR

WRIT PETITION (S) No.933/2004

.....
Shashvat Pandey & Others

Versus

Government of India and others

.....
SB: HON'BLE SHRI JUSTICE S.K. GANGELE
.....

Sh. Arvind Dudawat, Advocate for the petitioners.
Shri V.K. Sharma, Assistant Solicitor General for respondent No.1
Shri Brijesh Sharma, Government Advocate for the respondent State.
Shri T.C. Singhal, Advocate for respondent No.3.
Shri M.P.S. Raghuvanshi, Advocate for respondents No.5 to 7

ORDER
(14/11/2006)

1. Petitioners have filed this petition with regard to grant of pay scale at par with the pay scales available to the State Government teachers and Central Government Teachers. During the pendency of this petition petitioners No.2, 6 and 8 have resigned from service, they do not want to press this petition as submitted by learned counsel for the petitioners, only petitioners No.1, 3, 4, 5,7, 9 and 10 have pressed this petition. It is admitted fact that the respondent no.5 who employed the petitioners are being managed by a trust. The petitioner No.1,3, 4,5 and 10 have been appointed post graduate teachers and petitioners No.7 and 9 have been appointed as trained graduate teachers. As per the petitioners the corresponding pay scale of post graduate teachers in the State Government is Rs.5500-9000 and trained teachers is 5000-8000. However, respondent No.5 is paying consolidated salary to the graduate teachers Rs.3800/- and similarly trained graduate teachers have been paid consolidated salary Rs.3275/- and as per the conditions of affiliation with the Central Board of Secondary Education it is

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necessary for the institution to give pay scale to its staff at par with the staff employed in government institutions.

2. Respondent No.5 to 7 have filed their separate return and stated that the petitioners were not appointed as regular teachers. They have been working on stop gape arrangements, no regular procedure for their appointment was followed and educational qualifications and other criteria for appointments in the institution

is quite different as to State Government or Central Government teachers. It has further been submitted that the respondent institution is paying salary to its teachers on the basis of its financial capacity. The State Government also filed its return and stated that because the State Government has not issued any enactment except Madhya Pradesh Ashakiya Sikshan Sanstha (Adhyapakon Tatha Anya Karmcharyon Ke Vetano Ka sandaya) Adhiniyam, 1978, which is application to the aided institution, hence, it is not at all concerned with the matter.

3. Learned counsel for the petitioners has submitted that the institution is affiliated with the Central Board of Secondary Education and as per terms and conditions of institution, it is obligatory on the part of the institution to pay salary to the petitioners at par with the government teachers of government institutions. He has further submitted that the institution is discharging public duties hence, it is liable to pay the salary at par with the Government institution. In support of his contention, learned counsel relied upon judgments of the Hon'ble Supreme Court in the case of Shri Anadi Mukta Sadguru Shree Muktajee Vandasjswami Suvarna Jayanti Mahotsav Smarak Trust and others vs. V.R. Rudani and others reported in A.I.R. 1989 Supreme Court 1607, Smt. Nischal Singh (Solanki) Vs. Manager, Fromens Memorial School, Rewa and another reported in 2005 M.P.S.S.R 126 and two un-reported judgments of Delhi High Court.

4. Contrary to this, learned counsel for the respondents No.5 to 7 has submitted that the institution is not a State with the meaning of Article 12 of the

Constitution and it is not amenable to writ jurisdiction. Learned counsel further submitted that affiliation with C.B.S.E. is contractual in nature and there is no statutory liability for the respondents to pay the salary to the teachers at par with the government institution. Their qualifications, standard of recruitment procedure is quite different.

5. Learned Government Advocate has submitted that the Government has nothing to do with the dispute. He further submitted that the State Government has not enacted any law with regard to unaided educational institutions and is not concerned with regard to liability of the institution for salary and pay scales to its teachers.

6. From the facts stated above, it is clear that the petitioners have been appointed by the respondents No.5 & 6 and they have been performing duties of teachers. The petitioners have not filed their appointments orders. However, as per learned counsel for the petitioners in another petition, the appointment orders have been filed. In the present petition only certificates have been filed certifying the facts that the petitioners have been working as post graduate teachers or trained graduate teachers on regular basis.

7. The guidelines with regard to affiliation with the Central Board Secondary Education have also been filed as Annexure P-1. As per Clause 7 of the aforesaid guidelines which is as under:

“Service agreement with employees salaries paid to the staff scale of pay and allowances which should at least be at par with corresponding categories of teachers employed in Government institutions, disbursement of salaries to be made by cheques at the beginning of the month, but not later than 10th of each month provision of the Provident Fund and other benefits to the employees be verified.

The service agreement should be as per Board's norms/State of U.T. Government norms.

Similarly the norms of affiliation has also been filed and as per Clause 8 of the aforesaid norms it is also duty of the institution to pay the salary to its staff members at par with the Government institution, which is as under:-

“Private unaided schools established by Societies registered under the Societies Registration Act 1860 of the Government of India or under Acts of the State Government as educational charitable or religious societies having non-proprietary character or by Trusts”.

8. But main question is this that whether on the basis of the aforesaid guidelines or norms fixed for affiliation whether a writ of mandamus can be issued against the respondents No.5 to 7 with regard to payment of salary to its staff members at par with the Government institution. It is admitted fact that there is no statutory rule to this effect neither the State Government has enacted any enactment for the aforesaid purpose. In my opinion, in absence of any enactment or statutory rule this Court cannot issue writ of mandamus in favour of the petitioners for payment of salary at par with the staff of the government institution because certainly the employment of the petitioners is of private character. The judgments cited by the learned counsel for the petitioners of Hon'ble Supreme Court reported in 1989 AIR 1607 in the case of Shri Anadi Mukta Sadguru Shree Muktajee Vandasjiswami Suvarna Jayanti Mahotsav Smarak Trust and others vs. V.R. Rudani and others and two unreported judgments of Delhi High Court are not applicable in the present case, because in the aforesaid judgments there was a statutory enactment with regard to affiliation and also in the cases of Delhi High Court there is a Delhi High School Education Act, 1973 and as per Section 10 of the aforesaid Act, it is mandatory for the unaided institution to pay salary to its staff members at par with the government institution. This is not the situation in the present case.

9. The Hon'ble Supreme Court has held as under with regard to applicability of doctrine of equal pay for equal work in the case of M.P. Rural Agriculture

Extension Officers Association Vs/. State of MP and Another (2004) 4 SCC

646 which is as under:

“Applicability of the doctrine of equal pay for equal work on the touchstone of Article 39(d) read with Article 14 of the Constitution of India will have to be considered for the purpose of the present case on the premise that save except disparity in educational qualification, the nature of work performed by Extension Officers is identical and they had undergone a similar training. The Pay Commissions on or about 13-10-1982 and in the year 1999 desired and recommended that the same scale of pay be given to the Extension Officers irrespective of the educational qualification, but the recommendations of the Pay Commission were not accepted by the State. The Pay Commissions are constituted for evaluating the duties and functions of the employees and the nature there of vis-vis the educational qualifications required therefore. Although the Pay Commission is considered to be an expert body the State in its wisdom and in furtherance of a valid policy decision may or may not accept its recommendations. The State in exercise of its jurisdiction conferred upon it by the proviso appended to Article 309 of the Constitution of India can unilaterally make or amend the conditions of service of its employees by framing appropriate rules. The State in terms of the said provision is also entitled to give a retrospective effect thereto. True it may be that when recommendations are made by a Pay Commission, evaluation of job must be held to have been made but the same by itself may not be a ground to enforce the recommendations by issuing a writ of or in the nature of mandamus although the State did not accept the same in toto and made rules to be contrary by evolving a policy decision which cannot be said to be arbitrary or discriminatory.”

Hence, in my opinion, as per law laid by the Hon'ble Supreme Court, doctrine of equal work and for equal pay also cannot be applicable in the present case because the employer is quite different qualifications and procedure for appointment is also quite different. Hence in such circumstances this Court cannot issue a writ of mandamus in favour of the petitioners. If there is any violation of the terms and conditions of the affiliation then certainly, petitioners are free to raise objection before the C.B.S.E. Board respondent No.4.

10. Another point with regard to maintainability of the writ petition, in my opinion, this point has already been decided by the learned Single Judge of this Court in the case of **Smt. Nischal Singh (Solanki) Vs. Manager, Fromens Memorial School, Rewa and another reported in 2005 M.P. L.S.R. 126** in which learned single Judge has held that unaided education would be amenable to the writ jurisdiction. Hence the preliminary objections raised by the learned counsel for respondents No. 5 to 7 with regard to maintainability of this petition is hereby rejected.

11. Learned counsel for the petitioners also submitted that the respondent No. 5 to 7 have not been deposited the Provident Fund of the petitioners with Provident Fund Commissioner. It is hereby directed to the respondents No. 5 to 7 to deposit the amount of Provident Fund of the petitioners with respondents No.3 as per provisions of Provident Fund Act, 1952.

12. Petitioners are free to pursue their representations filed before respondent No.4.

13. Consequently, petition of the petitioners is dismissed with regard to grant of pay scale. However, respondents No.5, 6 and 7 are directed to deposit the Provident Fund of the petitioners as per their entitlement with Commissioner, Provident Fund, respondent No.3.

14. No order as to cost.

Sd/-
S.K. Gangele
JUDGE

Truelogy