

**JUDGMENT**

[WP(C) Nos.5506/2014, 5298/2020, 17659/2023, 5507/2014, 5681/2014, 5775/2014, 5799/2014, 5916/2014, 5934/2014, 5960/2014, 6111/2014, 6125/2014, 6126/2014, 6289/2014, 8660/2014, 9999/2014, 13476/2015, 29515/2017, 40027/2022, 31561/2024]

These writ petitions have a chequered history. The petitioners in these writ petitions are Pre-Primary School Teachers and Ayahs, attached to various Government Pre-Primary Schools appointed by the respective Parent Teachers Association.

2. They were being paid only a paltry sum as honorarium, without framing their service conditions from the side of the Government. In such circumstances, the petitioners herein were before this Court on an earlier round of litigation by filing separate writ petitions. The Government took the stand that the Teachers/Ayahs were not employed by the Government and hence, the Government has no role to play. The writ



petitions were closed on the basis of the afore-stand taken by the Government. The matter was carried in further appeal, and a learned Division Bench of this Court, as early as on 01.08.2012 in Writ Appeal No.205 of 2011, produced as Ext.P1 in W.P(C) No.5506 of 2014, took note of the rival contentions and found that the Government cannot take shelter on the submission that the appointment is not being made by them. This Court noticed that the pre-primary education is a mandatory requirement/right of every student with reference to the provisions of Section 11 of the Right of Children to Free and Compulsory Education Act, 2009 (for short, the Right to Education Act). This Court also noticed the qualification required for the Teachers as well as the Ayahs and held that, in such circumstances, the State should own up the responsibility. After rendering the afore, this Court found as under:

"9. Since the Government has not expressed any view contrary to the above but has only sought time for ultimate implementation, we feel we should leave all matters to be settled by the Government by evolving suitable Policy in regard to Pre-Primary Education in the



State. In the Government communication dated 31.07.2012, it is stated that the State Government has taken up the matter with the Central Government for their decision. However, Section 11 of the Right to Education Act casts burden of pre-School Education to appropriate Government, which at least in respect of Government Primary Schools is the State Government. Probably in the case of Central Schools and Schools under the CBSE and ICSE Boards, the appropriate Government may be the Central Government, which has to make arrangement and even funding. However, we do not think there is any need for this Court to decide as to whether the State Government or the Central Government has to meet the cost, or whether it should be shared between the Governments, and if so the ratio or pattern thereof, which are all matters for decision between the two Governments. All what we are constrained to hold is that going by the decision of the Supreme Court in Unnikrishnan's case above referred and Section 11 of the Right to Education Act, Pre-Primary Education also is a fundamental right of the people and it is the duty of the appropriate Government to provide free and compulsory Pre-School Education without which the objective of elementary education under the Right to Education Act cannot be achieved.

10. We declare the above position and direct the state Government in consultation with the central Government to evolve suitable Policy and Scheme for



imparting Pre-School Education to the student community in the State. Since Self Financing schools are also permitted to impart coaching even for elementary education and since section 8(a) of the Right to Education Act specifically prohibits reimbursement of cost in such Schools by the Government, probably there is no need for the Government to fund for Pre-School Education also run by unaided recognized Schools which are self financed.”

Thereafter, this Court with the hope that the Government would come up with a positive Service Rules, directed the Government, as an interim measure, to make payment of Rs.5,000/- to the Teachers and Rs.3,500/- to the Ayahs, till such time the Service Rules are framed.

3. The judgment of this Court as above was the subject matter of challenge before the Apex Court at the behest of the Government and the Special Leave Petition was rejected.

4. However, the Government thereafter took up a stand with respect to the fixation of certain qualifications, etc., for the purpose of extending the benefits as ordered. This was interdicted by this Court as per Ext.P4 dated 10.10.2013.



5. Insofar as, even after all the above, the Government did not come up with the Service Rules, the petitioners were compelled to approach this Court once again through the captioned writ petitions.

6. I have heard Sri.Abraham Vakkanal and Sri.George Poonthottam, the learned Senior counsel representing the petitioners in these writ petitions as well as Sri.Santhosh Kumar, the learned Special Government Pleader for the State.

7. On 31.03.2015, this Court taking note of the predicament of the petitioners herein, directed the Government to file a counter affidavit in the matter within a time frame. This Court notices that on the basis of the afore directions, a counter affidavit has been placed on record.

8. However, the question of implementation of the directions contained in Ext.P1 was not addressed even then. The Government, almost six years from 31.03.2015, on which date this Court issued the directions to file the counter affidavit as above, issued an order dated 26.08.2021 by forming a



Committee for the purpose of framing the policy required in this matter. This Court notices that the afore order, has laid down as many as six issues for consideration by the afore Committee. However, this Court notices that none of the afore six items framed for consideration by the Committee was with reference to the directions contained in Ext.P1 judgment of this Court as regards the framing of the service conditions. Subsequently, on 07.09.2021, the members of the Committee were also nominated. On the basis of the afore, the Committee so constituted, quite surprisingly, within a period of hardly two months, furnished the report along with a communication dated 05.11.2021. This Court notices that the findings in the afore report of the Committee were with reference to the six items that were directed to be considered in the order dated 26.08.2021. It is only thereafter, wisdom prevailed on the Government and the Government noticed that by constituting the committee as above, the specific question directed to be considered by this Court in Ext.P1 was not referred to the



Committee. Therefore, a communication dated 16.12.2021, directing the Committee to revisit the issue as regards the policy to be framed pursuant to Ext.P1, is seen issued.

9. On the basis of all the above facts, this Court notices that the judgment of the Division Bench of this Court was issued on 01.08.2012 and the order dated 31.03.2015 in the present writ petition was issued to the Government to take note of the failure to act on the basis of Ext.P1 judgment. From the history of what transpired thereafter, this Court is of the opinion that the Government was only trying to buy time, by one method or the other.

10. It is thereafter that Exts.P9 and P10 Government Orders were issued. Ext.P10 was issued on 04.04.2022, noticing that, unless and until the National Educational Policy, 2020 is being implemented in the State of Kerala, the question of formulation of the service conditions of the Teachers/Ayachs like the petitioners herein cannot be considered.



11. The writ petition has been amended by challenging Exts.P9 and P10 also.

12. This Court notices that the challenge in these writ petitions is essentially on account of the failure on the part of the Government to act in accordance with the directions contained in the Division Bench judgment of this Court at Ext.P1, referred to earlier. The directions contained in Ext.P1 were categorical. This Court, taking note of the importance of the Pre-Primary education, with reference to the provisions of the Right to Education Act, had issued specific directions to the Government to frame the Service Rules. The Government took almost 10 years to come up with Ext.P10, taking the stand that, unless and until the National Education Policy, 2020 is implemented, the Service Rules cannot be framed.

13. True, this Court in Ext.P1 had further directed that the Government should also take concurrence from the Central Government. But, that does not mean that an order in the nature of Ext.P10 can be issued by the Government in that



regard. The directions are issued by this Court under the hope that the Government would act accordingly on the basis of the orders issued. This is all the more so with respect to the prayers made by a marginalized group of the Society, who are the petitioners in these writ petitions.

14. On the basis of the afore, I am of the opinion that Ext.P10 issued by the Government dated 04.04.2022, cannot be sustained. This Court finds that the considerations made in Ext.P10 are contrary to the directions issued in Ext.P1 Division Bench judgment of this Court. In such circumstances, I am of the opinion that Ext.P10 is only to be quashed.

15. This Court also takes note of the submission made by Sri.Santhosh Kumar, the learned Special Government Pleader, to the effect that the Government has since constituted a Committee, pursuant to the directions of this Court and the afore Committee is in seisin of the matter. He assures before this Court that the Committee would definitely come to a positive finding without much delay and hence, no directions,



especially as regards payments to be effected to the petitioners may be issued.

16. But, even on the basis of the afore submission made by the learned Government Pleader, I am of the opinion that, insofar as Ext.P10 has been issued, in utter disregard to the directions issued by this Court in Ext.P1, the said order requires to be *set aside*.

17. The further issue arising for consideration is the interim arrangements to be extended, in the meantime. This Court takes note of the submission made by both sides that, at present, the Teachers and Ayahs are being paid a sum of Rs.12,500/- and Rs.7,500/- per month, respectively. The afore fixation is to be considered with reference to the directions issued in Ext.P1 judgment. Ext.P1 judgment, as already noticed, was issued all the way back in August 2012. In Ext.P1 judgment, the amounts directed to be paid were to the extent of Rs.5,000/- and Rs.3,500/- respectively. True, the Government has subsequently enhanced the honorarium being



paid to the petitioners as noticed earlier.

18. But, this Court notices that the afore increase in the honorarium is also not sufficient, taking into account the increase in the day-to-day expenses.

19. This Court further notices that a Primary Teacher is being paid in the pay band of Rs.25,000 - 54,000. However, the afore payment need not be extended to the petitioners. But, a reasonable escalation has to be made as regards the pay to be given to the petitioners also. This Court also notices the consideration made in Ext.P1 with respect to the daily income of an average manual labourer. It is known to everyone that manual labourer gets atleast Rs.1,000/- a day. This Court cannot equate the manual labourer with the present petitioners (Teachers/Ayahs) who are the foundations, with respect to the formation of every individual in the country.

20. In such circumstances, this Court is of the opinion that the Teachers should be paid an amount of Rs.27,500/- per month and Ayahs should be paid an amount of Rs.22,500/- per



month. The next issue to be considered is the date from which the afore escalation has to be carried out. This Court notices that Ext.P1 judgment has been rendered on 01.08.2012 with specific directions. Ext.P1 judgment also refixed the pay, with the hope that the Government would come up with the Service Rules and the payment to only have an ad-hoc status. In that view of the matter, the afore escalation in honorarium should be given effect from 01.08.2012. This Court also hopes that the Government will pay the arrears with respect to the Teachers/Ayahs, as expeditiously as possible, within a period of six months from today. The escalation as above is to be made effective with respect to the month of March 2025, to be disbursed from April 2025 onwards.

21. This Court further takes note of the submission made by Sri.George Poonthottam, the learned senior counsel for the petitioners, with respect to Exts.P12 to P16 in W.P(C) No.29515 of 2017, by which, almost similarly placed Pre-Primary Teachers in the Schools attached to the Panchayath Department have



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been regularized. He would further submit that similar treatment has to be extended to the petitioners also. The afore submission made by the learned senior counsel is definitely an attractive one which requires acceptance. However, in the light of the fact that the policy is stated to be framed by the Government in the light of the directions issued in Ext.P1, no positive directions are issued, under the hope that the Government would definitely take that also into consideration while framing the policy, with specific reference to the judgment rendered by the Apex Court in **Jaggo v. Union of India [2024 KHC 6750]**.

In the result, these writ petitions are disposed of as under:

- i. G.O.(MS) No.54/2022/GEDN dated 04.04.2022 (Ext.P10 in W.P(C) No.5506/2014) is *set aside*.
- ii. The Teachers/Ayachs to be paid an honorarium of Rs.27,500/- and Rs.22,500/- respectively, effective from March 2025 onwards, to be disbursed from April 2025.



- iii. Escalation as above to have retrospective effect from 01.08.2012 and Government to disburse arrears within six months time.
- iv. While formulating the service conditions of the Teachers/Ayabs the Government to take note of the claim for regularisation with specific reference to the dictum of the Apex Court in **Jaggo v. Union of India [2024 KHC 6750]**.

Sd/-

HARISANKAR V. MENON
JUDGE

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