**IN THE HIGH COURT OF KERALA**

W.A. No. 205 of 2011

Decided On: 01.08.2012

Appellants: **Kerala Pre-Primary Teachers and Ayahs Association**
**Vs.**
Respondent: **State of Kerala and Anr.**

**Hon'ble Judges/Coram:**C.N. Ramachandran Nair and B.P. Ray, JJ.

**JUDGMENT**

**C.N. Ramachandran Nair, J.**

1. The first appellant, an association of Pre-Primary School Teachers and Ayahs, and the remaining appellants, individual Teachers and Ayahs, filed Writ Petition for a direction to the State Government to give fair/minimum wages for coaching children in the Pre-Primary Schools attached to Government Primary Schools. The Writ Petition filed was dismissed by the learned Single Judge stating that appellants(petitioners) are not employed by the Government and so much so, the Government has no responsibility. This Writ Appeal is filed challenging this finding and for appropriate reliefs. We have heard learned Senior counsel Shri. Abraham Vakkanal appearing for the appellants and learned Government Pleader Shri. Liju Stephen appearing for the respondents.

2. During the first hearing of the Writ Appeal on 03/07/2012, we passed a detailed order stating that Pre-Primary education is mandatory for preparing children for elementary schooling and the Government itself recognised the position in Ext. P6 Government order issued on 05/07/1988, whereunder the Government permitted starting of Pre-Primary Schools in Government Schools under the control of Parent-Teachers Associations. Under the Government Order, the Scheme was to collect ` 15/- per pupil to meet the cost of running the School. Pre-Primary schools are running for the last nearly a quarter of a century. Parent-Teachers Association have been running the Pre-Primary Schools attached to Government Primary Schools by appointing Teachers with the qualification required under Ext. P6 Government Order, which is SSLC pass and Pre-Primary Teachers Training Certificate obtained after undergoing training in Government Pre-Primary Teachers' Training Institute, Thiruvananthapuram or Pre-Primary Teachers' Training Institutes recognized by the Government. While the Teachers are required to have the above educational qualification and training, Ayahs are required to have only educational qualification of pass in Standard VII. It is seen from Ext. P30 produced in the WP (C) that the setting up of the Pre-Primary Schools and the running of the same are under the control of the Deputy Directors of Education. The selection of Teachers and Ayahs were also made by a Committee headed by the Headmaster of the Government Primary School to which such Pre-Primary School is attached. Even though there was no provision in Ext. P6 Government Order for funding the Pre-Primary Schools by the Government, the Government is providing nutritious food including noon meals to the children of Pre-Primary Schools and besides this the Government started paying a paltry sum of wages to the Pre-Primary School Teachers and Ayahs, which was at the rate of ` 600/- per Teacher and ` 400/- per Ayah, per month until last year; and during the current year, the Government has increased wages to ` 900/- for Teachers and ` 600/- for Ayahs, per month. The appellants have been working for several years without getting any wages commensurate to the service rendered by them and it is only to get over their sufferings they have approached this Court for a direction to increase their wages to the fair minimum. The wages currently payable works out to ` 30 per day for Teachers and ` 20/- per day for Ayahs.

3. In the interim order dated 03/07/2012, we brought to the notice of the Government that minimum wages fixed by the Government for Pre-Primary School Teachers in the Unaided Schools under Ext. P9, 10 years back, was `2,500/- per month. Going by the high rate of inflation for over the last 10 years and the increase in wages and salaries paid to Government staff and others, we suggested to the Government that Pre-Primary School Teachers should be paid at least ` 5,000/- per month and Ayahs ` 3,500/- per month. Learned Government Pleader produced the communication issued by the General Education Department on 21/07/2012 stating that the Government is taking earnest steps to comply with the Court direction contained in the interim order, i.e. payment of wages as above. However, it is stated by the Government that the additional annual financial commitment to the Government will be to the tune of ` 14 crores, and therefore, clearance from the Finance Department is required. We, therefore, posted the case to today for the Government to furnish instructions from the Government with clearance from the Finance Department for passing final judgment. However, learned Government Pleader has produced communication dated 31/07/2012 wherein the Government says that Pre-Primary Education under the Right to Education Act is under active consideration of Government of India and the decision in this regard is awaited. The Government has accordingly sought further three month's time for final instructions in the matter. However, we do not think there is any need for this Court to keep the matter pending because ultimate decision will rest with the Government, and all what we need to consider now is some temporary relief to relieve the sufferings of the appellants until the Government finally decides the matter with regard to Pre-Primary Schools already functioning and more Schools, if necessary, required to be established and the Government's commitments towards it particularly to employees. Accordingly, we leave it to the State Government, in consultation with Central Government to evolve suitable Policy for Pre-Primary Education in the State as required under Section 11 of the Right to Education Act. However, we have to consider interim relief in the form of wages payable to the appellants until Policies are evolved by the Government including matters pertaining to service conditions of Teachers and Ayahs of Pre-Primary Schools because Government is likely to take several months to decide on everything finally.

4. At the outset, we are not inclined to uphold the view taken by the learned Single Judge that the State Government has no responsibility in the matter. In fact, Ext. P9 fairly establishes Government's commitment and responsibilities in the matter though in a limited way. Further, we have to take note of the ambit of Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as the Right to Education Act), and the duties of the Government for elementary education and also for Preschool Education, which is also statutorily recognized. We have to start with the finding of the Supreme Court in Unnikrishnan's case, reported in : AIR 1993 SC 2178, wherein the Supreme Court held as follows:-

Be that as it may, we must say that atleast now the State should honour the command of Art. 45. It must be made a reality - atleast now. In deed, the National Education Policy 1986 says that the promise of Article 45 will be redeemed before the end of this century. Be that as it may, we hold that a child (citizen has a fundamental right to free education upto age 14 years).

5. The Right to Education Act itself is enacted by the Government by taking note of it's responsibility as pointed out by the Supreme Court in large number of decisions, particularly in the one referred above. However, strangely elementary education as defined under Section 2(f) of the Right to Education Act covers only education from 1st standard to 8th standard. As a matter of practice, hardly any child goes to the 1st standard without being trained for two years in Pre-School, which is known as lower and higher Kindergarten Sections. Invariably every private School has Pre-School sections for two years' training of children for preparing them for schooling from Standard I onwards. It is not as if the Parliament is unaware of the requirement of Pre-School Education for training children for elementary education, because the same is recognized in Section 11 of the Right to Education Act, which is as follows:

11. Appropriate Government to provide for preschool education.- With a view to prepare children above the age of three years for elementary education and to provide early childhood care and education for all children until they complete the age of six years, the appropriate Government may make necessary arrangement for providing free pre-school education for such children.

6. We have already noted that way back in the year 1988, i.e. several years before passing of the Right to Education Act, the State Government recognized the need to have Pre-Primary Schools run in Government Lower Primary Schools and i.e. why Ext. P6 is issued on 05/07/1988 prescribing qualification for Pre-Primary School Teachers and Ayahs and providing for establishment of such Schools by Parent-Teachers Association in Government Primary Schools. The Government started providing nutritious food and noon meals to the children as an encouragement for Pre-Primary School Education and started paying wages to the Teachers and Ayahs though at very low rates as stated above. Section 11 of the Right to Education Act provides statutory recognition of the need to have Pre-School education for proper training to children to commence their elementary education, which is completely at the cost of the Government. In fact, at the admission stage of the Writ Appeal, we suggested to the Government that going by the earning of people in the State, where a male daily wager earns ` 400/- to `500/- every day and lady workers earn close to the very same amount, the Government should think of fixing at least ` 150/- per month towards fees to be collected from students for payment to the Teachers and Ayahs. However, in the statement submitted by the Government, it is clearly stated that,

Pre-schooling makes a child fit to start his education in regular schools and, no doubt the services of the Teachers in this regard is invaluable. As there is no scope for revising the fees, the only alternative is to revise the honorarium to substantial amount.

7. We admire the view taken by the Government because if fee is charged at high levels in Pre-Schools run in Government Schools, certainly many average and poor people cannot send their children for pre-schooling, which will lead to a kind of lethargy and unfitness for commencement of elementary education when the child reaches the age of 6. So much so, unless Pre-School Education is also made part of elementary education at the cost of the Government, at least for the poor people the objective of Right to Education Act cannot be achieved.

8. 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.

9. 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.

10. Before parting with the matter, we feel there is need to identify educational needs of children in the State with reference to financial position of parents and by taking into account the ground reality, that at least a section of the people have the capacity to provide quality education at high cost to their children in private unaided Schools. Constitutional obligation of free and compulsory education arises only for the deserving children and those who opt out of it by going to Self Financing Schools at their cost need not be disturbed by the Government by discouraging such schooling and by driving every child to Government School. Quality education in Self Financing Sector will certainly relieve the Government of their burden and the same is consistent with the Right to Education Act, which recognises Self Financed Schools, which are not funded and to which reimbursement by the Government is expressly prohibited under Section 8 of the Right to Education Act. The remaining limited question to be considered is whether we should grant interim relief to the Pre-Primary School Teachers and Ayahs pending Policy decision of the Government with regard to the establishment of Pre-Primary Education under the Right to Education Act including fixation of pay and allowances to Pre-Primary School Teachers and Ayahs. We suggested the Government to increase wages to ` 5,000/- for Pre-Primary School Teachers and ` 3,500/- for Ayahs, per month. Part Time Sweepers in the State are paid ` 6,000/- and above per month, and Class IV employees, whose educational qualification is 8th Standard, are paid ` 10,000/- to `12,000/- per month. We have already noticed that the minimum wages fixed for Pre-Primary School Teachers in Unaided Schools in 2010 was as much as ` 2,500/- per month. Considering all these, we do not think ` 5,000/- per month for a Pre-Primary School Teacher, who has SSLC as educational qualification and compulsory Pre-Primary School Training from Government or recognised Institution, is anyway high by any standards. Probably it would be the minimum, which works out to a little over ` 160/- per day, which is the daily wages paid to ladies under the Mahatma Gandhi National Rural Employment Guarantee Scheme. The work done by Pre-Primary School Teachers is not less noble or tiresome than the work of Primary School Teachers, who get probably a minimum of` 15,000/- per month. We, therefore, direct the Government as an interim measure, to start paying @ ` 5,000/- per month to all Pre-Primary School Teachers in such Schools attached to Government Schools run by Parent-Teachers Association and ` 3,500/- per month to Ayahs, until final decision is taken by the Government. The payment should start for the period starting from 01/08/2012 onwards, i.e. for the salary payment due from 01/09/2012 onwards, until final decision is taken by the Government. The payment so made will be only adhoc and subject to final orders of the Government based on Policy to be evolved by them. We are sure that the Government will not commit any mistake of fixing the salary at anything below the minimum stated by us above, though only as a temporary measure.

This Writ Appeal is allowed by vacating the judgment of the learned Single Judge and by disposing of the WP (C) as above.