A K. KRISHNAMACHARYULU AND ORS.

*v.*

SHRI VENKATESWARA HINDU COLLEGE OF ENGINEERING AND ANR.

B FEBRUARY 21, 1997

[K. RAMASWAMY AND S. SAGHIR AHMAD, JJ.]

*Service Law :*

C *Non-teaching staff of private college—Lab Assistants—Appointed on daily wages—Claim for equal pay for equal work on par with other Government employees—Writ petition before High Court—Held is maintainable—They are entitled to equal pay so as to be on par with Government employees under Article 39 (d) of the Constitution.*

D *Constitution of India, 1950:*

*Articles 39 (d) and 226—Equal pay for equal work—Teachers of private college not in receipt of grant-in-aid—Held, are entitled to seek enforcement of orders issued by Government by availing remedy under Article 226-Writ* E *petition is maintainable—They are entitled to equal pay so as to be on par with Government employees under Article 39(d).*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1774 of 1997.

F From the Judgment and Order dated 23.4.96 of the Andhra Pradesh High Court in W.A.No. 179 of 1996.

L.N. Rao, V.S. Reddy and S.U.K. Sagar for the Appellants.

B. Parthasarthy for the Respondents.

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The following Order of the Court was delivered :

Leave granted. Heard learned counsel for both the parties.

This appeal by special leave arises from the judgment of the High H Court of Andhra Pradesh, made on April 23, 1996 in W.A. No.179 of 1996.

The admitted position is that the appellant and six others had been appointed on daily wages to the post of Lab. Assistants as non-teaching staff of the respondent-private college. They were being paid daily wages. Writ petition and appeal seeking equal pay having been dismissed, they have filed the present appeal for direction to pay them equal pay for equal work on par with the other Government employees.

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It is not in dispute that executive instructions issued by the Government have given them the right to claim the pay scales so as to be on par with the Government employees. The question is: when there is no statutory rule issued in that behalf, and the Institution, at the relevant time, being not in receipt of any grant-in-aid; whether the writ petition under Article 226 of the Constitution is not maintainable? In view of the long line of decisions of this Court holding that when there is an interest created by the Government in an Institution to impart education, which is a fundamental right of the citizens, the teachers who teach the education gets an element of public interest in the performance of their duties. As a consequence, the element of public interest requires to regulate the conditions of service of those employees on par with Government employees. In consequence, are they also not entitled to the parity of the pay scales as per the executive instructions of the Government? It is not also in dispute that all the persons who filed the writ petition along with the appellant had later withdrawn from the writ petition and thereafter the respondent-Management paid the salaries on par with the Government employees. Since the appellants are insisting upon enforcement of their right through the judicial pressure, they need and seek the protection of law. We are of the view that the State has obligation to provide facilities and opportunities to the people to avail of the right to education. The private institutions cater to the needs of the educational opportunities. The teacher duly appointed to a post in the private institution also is entitled to seek enforcement of the orders issued by the Government. The question is as to which forum one should approach. The High Court has held that the remedy is available under the Industrial Disputes Act. When an element of public interest is created and the institution is catering to that element, the teacher, the arm of the institution is also entitled to avail of the remedy provided under Article 226; the jurisdiction part is very wide. It would be different position, if the remedy is a private law remedy. So, they cannot

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A be denied the same benefit which is available to others. Accordingly, we hold that the writ petition is maintainable. They are entitled to equal pay so as to be on par with Government employees under Article 39(d) of the Constitution.

B The appeal is accordingly allowed. The writ is issued. But in the circumstances without costs.

R.P. Appeal allowed.