

# Employment Conditions of Private School Teachers In Tamil Nadu – Legal Regime and Judiciary’s Approach

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## **Abstract**

About 50% of students study in private schools but private school teachers’ has been subject to exploitation for a long time. The difference in terms of contractual employment of teachers in government and private schools are explained using a review of the available literature. Improper dismissal, unfair contract terms, inadequate and irregular payment of salaries are identified as the major problems faced by private school teachers. This article analyses the lacunae in current state laws regulating private schools in Tamil Nadu. The terms of employment of teachers in government and private schools are compared using secondary data derived from reliable sources. Teachers are forced to strike and engage in public agitations to assert their rights as otherwise they are burdened by long litigations in courts. Judiciary’s approach towards private educational institutions is traced through various decisions of the Supreme Court and high courts. The amenability of private schools to writ jurisdiction is also analyzed. Some recommendations are made to improve the labour conditions and grievance redressal of private schools teacher in Tamil Nadu.

**Keywords:** Private schools, Private school teacher, writs, Labour laws.

## **Introduction**

Teachers are the pillars of a good education system. Their remuneration plays an important role in their performance. There are numerous testimonials by private school teachers alleging irregular payment of wages and exploitative service conditions. Especially during the global pandemic, several teachers did not receive their salaries for months, forcing many of them to leave the profession and take up menial jobs. The number of teachers has reduced by 1.95% from 2021-22. The decline is particularly high in private schools (2.94%) and other schools (8.3%)<sup>1</sup>. The reason for the decrease may be attributed to the irregular or nonpayment of wages. Also, number of schools has reduced 15.09 lakhs to 14.89 lakhs in 2020-21. The decline in total schools is mainly due to closure of schools under private and other management.

## **Private Schools and government schools**

About half of Indian students study in private schools. Even Parents with lower incomes spend their hard-earned money to enroll their children in private schools. This craze for private schools among the

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<sup>1</sup> Report on Unified District Information System For Education Plus (Udise+), 2021-22, Flash Statistics.

public allows them to charge high fees. Teachers are being exploited, as the main aim of most private schools is earning profit. Black money in the hands of influential persons is being pumped into these institutions, which enable them to develop sophisticated infrastructure. Teachers are compelled to handle administrative work also increasing the workload while the pay is extremely low. Job security and other benefits available to government school teachers are also not given to those in private schools.

The government on the other hand provides free education, employs qualified teachers and pays them reasonable salaries. Government schools are fully financed by the government. Today, government schools are striving hard to provide education at par with private schools. Government schools receive donations from politicians and corporates. The TN government has also launched an official website for receiving donations from individuals and corporates for government schools. Such donations by corporates shall be considered a CSR (Corporate Social Responsibility) activity<sup>2</sup>. This ensures that the government schools have other sources of funds.

### **Contract form of employment**

Generally teachers are employed permanently but in the last two decades engaging teachers on fixed term contracts have increased. Contractual engagement of teachers allows managements to employ teachers without providing them with of job security and protection of other labour welfare legislations. This was initially opposed but it eventually became common practice. Nowadays the government engages various professionals like doctors, engineers on a contractual basis. This has increased precarious employment. The terms of their employment, conditions of work, salary and other perks are provided on their websites clearly and are according to guidelines issued by the appropriate authority<sup>3</sup>. The local authorities under the state governments usually engage in contractual relations to meet the requirements of teachers for a short period like a year. The KV schools run by the Central government also engage teachers on a contractual basis<sup>4</sup>. Contractual engagement by private schools are even more exploitative as they do not provide such information publicly often resulting in exploitative labour conditions. The criteria for selection of teachers must be excellence in their field, experience, and educational qualification but private schools have been using term contracts to engage teachers as a cost-cutting measure. Many a time these teachers do not have the requisite qualification, receive lower salaries, and have less job security. The terms of their employment are protected only by the employment contract. The teachers are forced to resort to public agitations and strikes to seek relief in case of breach of contract<sup>5</sup>

There is literature both supporting and criticizing the contractual engagement of teachers. Nandini Jayakumar<sup>6</sup> analyses the engagement of contractual teachers by the village or local authorities by the government and gives an interesting observation that about half a million teachers are engaged on a

<sup>2</sup> Namma School, <https://nammashool.tnschools.gov.in/#/>.

<sup>3</sup> Bêteille, T., & Ramachandran, V. (2016). Contract Teachers in India. *Economic and Political Weekly*, 51(25), 40–47. <http://www.jstor.org/stable/44003636>

<sup>4</sup> Contractual staff with salary, <https://kvsangathan.nic.in/rti-faq/contractual-staff-salary>

<sup>5</sup> Musab Quzi, Maharashtra government sacks private institute imparting skill training in schools over salary dues, *The Free Press Journal*, April 17, 2023 <https://www.freepressjournal.in/education/maharashtra-government-sacks-private-institute-imparting-skill-training-in-schools-over-salary-dues>.

<sup>6</sup> Nandini Jayakumar, Contractual Engagement of School Teachers, CCS Working Paper No. 249, Centre for Civil Society.

contractual basis by the government. The paper also finds some positive aspects of contract-based teachers at the primary school level as the teachers also belong to the student community and in some cases provide communal and cultural benefits. She concluded that contractual teachers are just as effective as permanent teachers but engaging equally qualified teachers on a contract basis with half the salary, no employment benefits and tenure, like in the case of Delhi local schools is not valid.

Robinson, Nick & Gauri, and Varun<sup>7</sup> explain the shift in judicial attitude towards contract teachers post-liberalization. The authors note that contract teachers are not covered under any labour legislation like the Contract Labour (Regulations and Abolition) Act of 1970 or the Industrial Disputes Act of 1947. The only remedy they have is to approach courts. The courts have been denying the demands of contract teachers to regularize their employment, equal pay and other labour rights. The judiciary seems to be siding with the government and in a way encouraging the contractual engagement of teachers in government schools. The article further states that this shift is extreme and the judiciary has to engage in dialogue with teachers and the government.

Dr Kannamani Ramasamy, and Dr Govindasamy Chinnu<sup>8</sup> made some interesting and controversial recommendations like mandating government employees' children in government schools, reviewing teachers' abilities every 4-5 years and restricting teaching employment only for 20-25 years to increase opportunities for youth.

### **Laws regulating service conditions of private school teachers**

Education falls in the concurrent list and therefore both state and the central government can make policies concerning education. The Central Board of Secondary Education (CBSE) handles education at the center level and Tamil Nadu has the system of Samacheer Kalvi was introduced by the Tamil Nadu Uniform System of School Education Act 2010, to unify the various systems of education and to ensure access to quality education to all. This section contains the provisions of various laws made by the central government and by the government of Tamil Nadu to regulate the terms of employment of teachers.

### **Tamil Nadu Private Schools (Regulation) Act, 2018 and rules thereunder –**

The Tamil Nadu Recognised Private Schools Act, 1973 has been replaced by Tamil Nadu Private Schools (Regulation) Act, 2018 which has come into effect from January 2023. Chapter VII deals with the appointment of staff and their conditions of service. Sections 32 to 35 state the following method of appointment, minimum qualifications, code of conduct formed by the government and terms and conditions of staff of private schools. Section 36(b) provides that withhold payment of grants to schools if teachers are not paid the salary and allowances properly.

According to the Act, teachers retrenched due to orders of the government shall be appointed in any government or private school. The act provides fines up to 1 lakh, an additional fines which may extend to ten thousand rupees for each day during which such contravention continues and imprisonment up to

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<sup>7</sup> Education, Labor Rights, and Incentives: Contract Teacher Cases in the Indian Courts, Robinson, Nick & Gauri, Varun, July 2010.

<sup>8</sup> Dr. Kannamani Ramasamy, Dr. Govindasamy Chinnu, Creating Equal Job Opportunities In The Teaching Sector At Tamilnadu: People's Perspective.

a year for contravention of provisions of the act. Chapter X of the act provides accounts and audits of private schools under the act.

The rules made under the Act provide a code of conduct for teachers for violation of which the school committee shall take disciplinary action. The other duties of the school committee are organizing training programmes for capacity building of teachers, grievance redressal and constituting an internal complaints committee in accordance with sub-section (2) of section 4 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. Teachers in private aided schools must be paid salary, DA and allowances in the manner provided by the government. Annexure VII includes the list of registers to be maintained in private schools which includes inter alia attendance register, cash book, ledger, log Book but does not include a register containing details of salary and allowances paid to the teaching and non- teaching staff.

### **Code of Regulations for Matriculation Schools**

Schools recognized by this code are called matriculation schools. This code provides the procedure for recognition and conduct of the affairs of the school. The matriculation schools are under the control of the Department of school Education. The management of the school shall be done by a governing body who shall delegate such authority to a correspondent. The code allows the schools to levy their own fee provided it is reasonable. The services provided must be commensurate to the fee charged. Regulation 16 of the code states that the teachers and non- teaching staff must be paid at least as per the Government scales of pay revised from time to time.

In *The Special Officer vs All Teachers Front*<sup>9</sup>, the petitioners contended that private school teachers should be paid at par with the government school teachers and if the management could not afford to pay the same, it should hand over the management to the government. The Madras HC, confirmed the order of the single judge bench and stated that the teaching and non-teaching staff are entitled to get equal pay on par with their counterparts serving in the Government Schools. But, it is common knowledge that in reality they are not paid at par with the government. A teacher from a private school receives the initial basic pay guaranteed by the government only after 10-15 years of continuous service whereas their government counterpart would be receiving salaries, which are many times higher<sup>10</sup>.

### **The Right of Children to Free and Compulsory Education Act, 2009**

It is an act that was brought to provide every child of the age of six to fourteen years the right to free and compulsory education in a neighbourhood school till the completion of elementary education. It was enacted to implement the 82nd Amendment to make education a fundamental right. The Act mandates every private school to give free education to 25% of students from underprivileged sections of society.

The provisions governing the rights of teachers are as follows. The act provides the Qualifications for appointment and terms and conditions of service of teachers in which it states that an academic authority having authorization from the central government shall set the qualifications for teachers. The National

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<sup>9</sup> *The Special Officer vs All Teachers Front*

<sup>10</sup> Syed Rizwan Geelani, Private school teachers continue to get 'meagre' salary, Greater Kashmir, 17 Feb, 2023, 1:12 am, <https://www.greaterkashmir.com/education/private-school-teachers-continue-to-get-meagre-salary>

Council for Teacher Education issued the NCTE (Determination of minimum qualifications for Recruitment of Teachers in Schools) Regulations, 2001 to prescribe minimum qualifications for the engagement of teachers. Section 23(3) states, “(3) *The salary and allowances payable to, and the terms and conditions of service of, teachers shall be such as may be prescribed.*” Section 28 prohibits teachers from engaging in private tuition or private teacher activity. It is a common practice for teachers to conduct private tuition after school. Therefore, this provision is not practised. Fees collected in private tuition are being the primary source of income for many teachers as the salary paid by schools are insufficient. A prerequisite to improving the quality of education and enforcing Section 28 is by ensuring a reasonable salary is being paid to teachers.

In *T.N.Vidyanandan vs The State Of Tamil Nadu*<sup>11</sup>, the Madras High Court, a writ petition was filed to enforce uniform statutory service conditions for all aided school teachers. The court held that the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, (Tamil Nadu Act 29 of 1974) and the Rules framed thereunder as well as the Right of Children to Free and Compulsory Education Act, 2009 and Rules framed thereunder, would take care of the same and a new policy is not required.

### **Amenability to Writ jurisdiction**

There are a lot of judgements on whether private unaided institutions are amenable to writ jurisdiction under article 226. The question of whether a public law element is present in issues raised were answered differently in different judgements as only if a public duty and public law element is present a writ is maintainable.

*Marwari Balika Vidyalaya -v- Asha Srivastava*<sup>12</sup> reported in (2020) 14 SCC 449, the Apex Court while examining the issue of termination of an Assistant Teacher in a private unaided institution, had held that a writ application is maintainable in such cases even as against the private unaided educational institutions as they are covered by the words any person or authority in article 226. The court was of the opinion that the remedy of Mandamus should be easily available and matters of employment and service matters are also covered. The court granted back wages for wrongful dismissal of the employee after 5 years of service.

In *Bhagwanjibhai Kathanbhai vs State Of Gujarat*<sup>13</sup>, the Gujarat HC a writ under article 226 was held to be maintainable against an Army school registered under the Societies Registration Act. It was stated that teachers' employment can be terminated only after following due process. Detailed discussions on the applicability of writ jurisdiction to schools were made in this judgement.

However in 2022, in *St. Mary's Education Society v. Rajendra Prasad Bhargava's case*<sup>14</sup> the Supreme Court writ petitions were held to be not maintainable. The functions of the minority private unaided institution were public functions but service conditions are not matters of public interest unless there is a statutory force behind it. Hence there cannot be an action for a breach of law but only for a breach of

<sup>11</sup> *T.N.Vidyanandan vs The State Of Tamil Nadu*, W.P (MD)SR.No.9224 of 2018

<sup>12</sup> *Marwari Balika Vidyalaya v. Asha Srivastava*, (2020) 14 SCC 449

<sup>13</sup> *Bhagwanjibhai Kathanbhai vs State Of Gujarat*,(2022), C/SCA/17270/2021

<sup>14</sup> *St. Mary's Education Society v. Rajendra Prasad Bhargava*, (2023) 4 SCC 498

contract. The nexus test was laid down which stipulates that there must be a nexus with the public duty/function/element.

### **Recommendations**

#### **To set a standard minimum salary to be paid by schools**

The SC states that the terms of employment of teachers cannot be regulated as the relationship between the teacher and management is purely contractual and governed only by agreement among them<sup>15</sup>. This allows private school management to take the upper hand. Due to weaker collective bargaining and pressure of unemployment teachers are forced to work in exploitative conditions.

India's labour policy has always been protective of labour rights. A simple example of protective policies of government is the Minimum Wages Act to lay down the minimum wages for workers employed in the unorganized sector. The act came in the background that the workers engaged in factories were exploited and paid very minimal wages which was insufficient even for bare survival. The courts have laid down that payment of minimum wages is mandatory even if the workers are willing to work for wages lesser than the minimum wage. Teachers are facing a similar problem. Social security is a human right which includes medical care, sickness, unemployment, old age, employment injury, family, maternity, invalidity and survivors' benefits<sup>16</sup>. The only remedy teachers have to seek social security now is to approach the courts due to which they are stuck in a long legal battle

Schools today spend only 10-15% of their surplus in payment of salaries to their teachers. The rest goes to the pockets of management and infrastructure development. A limit on profits cannot be set, however, the schools may be mandated to not overburden their employees and exploit them by paying less than a reasonable compensation for their services. Given the huge amount of teachers and their exploitation due to insufficient laws, it is necessary to have a statutory solution in the form of legislation to protect them.

#### **Protection to whistleblowers**

Private schools hire and fire teachers to their advantage. Teachers who complain about school management are fired without reasonable cause forcing them to cooperate with the school management in commission of malpractices to save their job<sup>17</sup>. A whistleblower protection policy must be brought about to encourage teachers to come forward about the maladministration of schools. While government school teachers have strong unions and proper grievance redressal mechanisms, their private counterparts lack them. The Grievance Redressal system of private schools fails to serve the purpose as it is done by the school committee which is an internal body. It is in the best interest of school regulation to create a mechanism for the teachers to raise complaints about management.

#### **Maintenance of annual records to include salary paid to teachers**

The UIDSE provides open access to information about all schools, but the data is limited to the infrastructure, facilities, and number of teachers and students in the school. The data does not reflect the

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<sup>15</sup> id at 14

<sup>16</sup> International Labour Standards on Social security, <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/social-security/lang--en/index.htm> (last visited may 27, 2023)

<sup>17</sup> Shubhangi Misra, There's a scam in bank passbook of Gr Noida pvt school teachers. But nobody dares complain, The Print, 18 January, 2023 11:01 am, <https://theprint.in/feature/theres-a-scam-in-bank-passbook-of-gr-noida-pvt-school-teachers-but-nobody-dares-complain/1320000/>.

status of teachers engaged by the school. A similar database can be created for teachers or merged with the existing framework to detect and avoid exploitation. CBSE Draft bill, 2012 mandates every school to publish the details of salaries of teachers in their website (section 25). The CBSE bill shall be brought to force to give the staff of private schools statutory rights. Current inspections done by the CBSE and Department of school education shall make sure that teachers salary and service conditions are reasonable.

### Limitations and Scope for further study

1. This article uses secondary data only. A quantitative study can be made by analyzing the adherence to norms in private schools using questionnaires or interview methods to quantify the success of the prevailing laws.
2. The area of study is limited to Tamil Nadu. Future researchers can do the same on a pan-India level. A comparative study of the labour conditions of teachers in other countries shall also be undertaken.
3. Research on functioning of school committees can be done.

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