District Court Of The United States

DISTRICT OF MARYLAND.

Civil Docket No. 170.

Filed November 22, 1939.

WALTER MILLS, PLAINTIFF,

vs.

BOARD OF EDUCATION OF ANNE ARUNDEL COUNTY, A CORPORATION, AND GEORGE FOX, AS COUNTY SUPERINTENDENT OF SCHOOLS OF ANNE ARUNDEL COUNTY, DEFENDANTS.

Thurgood Marshall, Leon A. Ransom, William H. Hastie, W. A. C. Hughes, Jr., Charles Houston and *Edward D. Lovett* for complainant.

William C. Walsh, Attorney-General of Maryland; *H. Vernon Eney*, Assistant Attorney-General of Maryland, and *Noah A. Hillman* for defendants.

Constitutional Law—Fourteenth Amendment of Constitution—Equal Protection of the Laws—Bill for Injunction Against Discrimination As to Salary of School Teachers Because of Race or Color—Injunction Granted.

HESNUT, District Judge—

This case is a natural sequel to that Mills vs. Lowndes et al., in this Court, F. S. 792. In that case the same aintiff, who is a colored school teacher uployed by the Board of Education Anne Arundel County, of the State Maryland, sued the *State Board of ducation* to secure an equalization of aries paid to white and colored teachs in the public schools of Maryland. motion of the defendants after exded argument, the complaint was missed for various reasons stated in opinion, importantly including the ence from the record as a defendant he County Board of Education. In present suit the plaintiff has sued *County Board* and its superindent alone. Under the practice rely established by the new federal s of civil procedure the defendants e filed third-party complaints nst the *State* Board of Education the County *Commissioners* of Anne del County as third party defens, and the latter have moved to iss these third party complaints. e complaint in this case calls aton to the Maryland statute which des a *minimum* scale or salaries *hite* teachers, graduated to pronal qualifications and years of exce, and a separate statute provid*lower minimum* for teachers in d schools; and alleges that in cal application only white teache employed in white schools and teachers in colored schools, and he latter are paid less in Anne el County than white teachers on account of their race or color. aintiff contends that this constian unconstitutional discriminaich is prohibited by the equal on clause of Section 1 of the endment to the Federal Consti-

purposes of comparison it will be sufficient to take the case of white and colored teachers respectively who have a first grade rating and nine years or more experience. In 1904 the first minimum salary act for white teachers (there being none at all for colored teachers prior to 1918) prescribed a minimum for white teachers of $300 per annum; in 1908 and 1910 this was increased (for a teacher in white elementary schools having a first class rating and more than eight years' experience) to $450; in 1916 to $550; in 1918 to $600; in 1920 to $750; in 1922 to $1,150; and in 1939, (on a slightly different basis as to professional qualifications and experience) to $1,250, and, if the teacher held an academic degree, to $1,450. By comparison the minimum for colored clementary teachers of similar rating has been much less. Their salaries have been fixed by statute not on a yearly but monthly basis, and for most of the time heretofore, for seven months of the year. In 1918 the minimum was $280 per year, increased in 1920 to $445 per year; in 1922 to $595; and in 1939, (by reason of increase in the duration of the school year) to $765 per year. At the present time, therefore, the respective minima are $1,250 for white teachers and $765 for colored teachers, with comparable professional qualifications and experience.

The plaintiff contends that the statutes are unconstitutionally discriminatory on their face and should be held generally invalid. On the other hand it is pointed out in defence of the statutes that they constitute *minimum*, not *maximum*, salaries, and that, while the minimum for white teachers is higher than the minimum for teachers in colored schools, the statutes affecting the colored principal at $995; but in practice the County Board in many cases actually pays higher salaries to the principals of schools, in consideration of particular conditions and capacities of the respective principals. Thus the plaintiff's salary for the current year has been fixed at $1,058, or $103 more than the minimum, and in the case of three white principals, mentioned in the evidence, the salary is $1,800 per year, or $250 more than the minimum. The defendants contend that the materially higher salaries of these three white teachers of schools comparable in size to that of which the plaintiff is a principal is due to the judgment of the Board that the three white principals have superior professional attainments and efficiency to that of Mills;[4] but it is to be importantly noted that these personal qualities, while explaining greater compensation to the particular individuals than the minimum county scale for the particular position, do not account for the difference between $1,058 only received by Mills and the minimum of $1,550 which by the County scale would have to be paid to *any* white principal of a comparable school. Or, in other words, if Mills were a white principal he would necessarily receive according to the County scale not less than $1,550 as compared with his actual salary of $1,058.

The plaintiff has filed this suit not only individually but on behalf of other colored teachers in Anne Arundel County including those teaching in colored high schools. By the Anne Arundel scale the salaries of teachers and principals of white *high* schools is somewhat higher than that for the white elemetary schools, the difference ranging from $300 to $400; and there is also a differential in favor of high school teachers in the scale for the colored schools, the difference in favor of the high school teacher being about $300. There is also a salary differential between elementary and high school teachers in colored schools by the State minimum statute. It is not necessary to state further details of the high school schedules in this respect, but the case of Frank E. Butler, a colored principal of the Bates High School at Annapolis may be taken for illustration. He received an A.B. degree from Morgan College in 1920 and has been continuously employed as a teacher in or principal of a colored school in Anne Arundel County for nineteen years. He now receives an annual salary of $1,600. A white principal of a comparable white high school would receive a minimum of $2,600.

I also find from the evidence that in Anne Arundel County there are 243 white teachers and 91 colored teachers; but *no one* colored teacher receives so much salary as *any* white teacher of similar qualifications and experience.

The crucial question [illegible] ment to pay more than the minimum to any white or colored teacher who merits it, provided the discrimination is not solely on account of race or color.

I do not find it necessary in this case to expressly decide that the State minimum statute for white teachers is necessarily on its face unconstitutional, because it is the county practice rather than the mere terms of the statute which prejudices the plaintiff. There are practical advantages to the County School Board in observing the State statute, as it thereby becomes entitled to participate in the so-called Equalization Fund provided by the State as fully explained in the opinion in the former case. That is to say, it will be less expensive to Anne Arundel County to raise the colored teachers' pay to the minimum of the State statute for white teachers than to fail to comply therewith and lose the benefit of the Equilization Fund. The evidence shows that, to bring the colored teachers' pay up to the statutory minimum for the white teachers will cost the County only $45,000, while at the present time it is receiving about $100,000 from the Equalization Fund. To raise this extra $45,000 will mean seven or eight cents additional on the general County tax rate for school purposes. I am not unmindful of the difficult financial position which is thus created for the County, as has been so forcibly urged by counsel. The County has a present very high tax rate of about $2.30 per $100 of assessed valuation of property. It is also true that the problem presented by this case is not peculiar alone to Anne Arundel County, but exists to a more or less extent in many other counties of the State; and indeed the problem is not limited to the State of Maryland, but exists in many Southern States.[6]

Nor has Anne Arundel County been unmindful of or indifferent to its problem. As previously noted, it does not limit the pay of its teachers either white or colored to the minima of the State statutes. In January, 1938, the Board passed a resolution expressing sympathy with the proposition that the salaries of white and colored teachers should be equalized by State law, and expressing regret that no immediate action could be taken by the Board toward that result in view of the county's finances, but indicating an intention to soon make some increase in the rate of pay for the colored teachers. For the scholastic year 1939-40 it has increased its budget for colored teachers' salaries from $66,000 to $74,000, which is a much larger proportionate increase for colored teachers than for white teachers, the increase for the latter being from $210,000 to $218,000. In January, 1939, it voluntarily increased by ten per cent. the salaries of colored school

colored teachers in Anne Arundel County solely on account of race or color, and my finding from the testimony is that this question must be answered in the affirmative, and the conclusion of law is that the plaintiff is therefore entitled to an injunction against the continuance of this unlawful discrimination. I wish to make it plain, however, that the Court is not determining what particular amounts of salaries must be paid in Anne Arundel County either to white or colored teachers individually; nor is the Board in any way to be prohibited by the injunction in this case from exercising its judgment as to the respective amounts to be paid to individual teachers based on their individual qualifications, capacities and abilities, but is only enjoined from discrimination in salaries on account of race or color.

Counsel, after conference between themselves, can submit the appropriate form of judgment.

(1) As plaintiff has not prayed for an interlocutory injunction a three-judge Court was not authorized by U. S. C., Title 28, s. 380 Stratton vs St. Louis, S. W. Ry. Co., 282 U. S. 10; McCart vs. Indianapolis Water Co., 302 U. S. 410.

The jurisdiction of the Court in this case is based on 28 U. S. C., s. 41 (1) and (14).

(2) See also Act of 1939, Ch. 514, increasing from 47 cents to 51 cents the county tax levy for school purposes as a condition to the benefit of the "Equalization Fund" discussed in the former case, and hereinafter also mentioned.

(3) A non discriminating minimum salary for teachers was held constitutional in Bopp vs. Clark, 165 Iowa 697; see also School City of Evansville vs. Hickman, 47 Ind. App. 500. At least 20 States have some form of minimum salary laws for teachers. See "Minimum Salary Laws for Teachers," Nat. Ed. Assoc., Wash., D. C., Jan., 1937.

(4) The defendants also contend that the $1,800 compensation of these three white principals (that is $250 more than the minimum county scale) is in part justified by the fact that their particular schools are what are called consolidated schools and that the bus transportation of pupils to the school, the busses arriving and leaving at different times, requires the principals of these schools to have approximately 1¾ hours additional attendance per day at school over and above the time required for Mills. It appears, however, that what is required in this respect is additional time from the teachers of the school to receive and discharge pupils rather than from the principal alone. The teachers receive no additional compensation for their extra time which seems to be substantially merely an incident of their general duties.

(5) See "Special Problems of Negro Education," by Doxey A. Wilkerson, Staff Study No. 12, prepared for the Advisory Committee of Education, published by the Government Printing Office, Washington, 1939, pages 8, 14, 22, 24.

(6) See Special Problems of Negro Education by Doxey A. Wilkerson, Staff Study No. 12, prepared for Advisory Committee on Education, Government Printing Office, Washington, 1939; also Progress and Problems for Equal Pay for Equal Work, published by the National Education Association, 1201 16th St., N. W., Washington, D. C., June, 1939, p. 24; and Minimum Salary Laws for Teachers, published by the same Association January, 1937.

LEGAL NOTICES.

Fourth Insertion.

Edward P. Waldschmidt, Solicitor,
922 Light Street.

IN THE CIRCUIT COURT OF BALTIMORE CITY — (B—509 — 1939) — Evelyn Moss, complainant, vs. Martin Moss, defendant.

ORDER OF PUBLICATION.

The object of this suit is to procure a divorce a vinculo matrimonii by the complainant, Evelyn Moss, from the defendant, Martin Moss.

The bill recites that the parties were married on or about March 23rd, 1935, in the City of Baltimore and the State of Maryland by a religious ceremony; that the complainant is now, and has continuously been a resident of the City of Baltimore and the State of Maryland, for more than two years prior to the filing of her bill of complaint; that there were no children born unto the parties to this suit as issue of said marriage; that the complainant has always been that of a chaste, obedient and faithful wife towards the defendant; that the defendant abandoned and deserted the complainant on or about December 15th, 1935, without any just cause or excuse therefore, and whilst the parties hereto were residents of the City of Baltimore and the State of Maryland, and he declared his intention to live with her no longer as her husband, and that said separation has continued uninterruptedly for more than three years prior to the filing of this bill of complaint, and is the final and deliberate act of the defendant, and the separation of the parties hereto is beyond all reasonable hope or expectation of reconciliation; that the defendant is a non resident of the State of Maryland and was last heard of whilst residing in the Bronx, New York City, N. Y.

It is thereupon this 6th day of November, 1939, ordered by the Circuit Court of Baltimore City, that the complainant, Evelyn Moss, by causing a copy of this order to be inserted in some daily newspaper, published in the City of Baltimore, once a week for four successive weeks before the 7th day of December 1939, give notice to the absent defendant, Martin Moss, of the object and substance of the bill of complaint, and warning him to be and appear in this honorable Court, in person or by solicitor, on or before the 22nd day of December, 1939, to show cause if any he may have, why the relief prayed for should not be granted.

W. CONWELL SMITH.

True Copy—Test:

CHAS. R. WHITEFORD,
Clerk.

n7,14,21,28

William S. Wilson, Jr., Solicitor,
1001-2 Court Square Building.

IN THE CIRCUIT COURT OF BALTIMORE CITY — (B—511—1939) — Marion Winifred A. Kendall vs. William Kendall.

ORDER OF PUBLICATION.

The object of this bill is to procure a decree of divorce a vinculo matrimonii by the plaintiff, Marion Winifred A. Kendall, from the defendant, William Kendall.

The bill recites the marriage of the parties in Elkton, Maryland, on January 1, 1935, by a religious ceremony, the residence of the plaintiff in Maryland for more than two years prior to the filing of the bill; that no children were born to the parties as a result of the marriage; that without just cause the defendant abandoned and deserted the plaintiff five days after the marriage, namely, on January 6, 1935, and has never returned to live with the plaintiff since that date; that there is no reasonable hope of reconciliation; that the defendant is a non-resident of Maryland whose last known address was Washington, D. C.

LEGAL NOTICES.