

Dealing with the precise question here involved, Judge Chestnut, in Mills v. Lowndes 26 F. Supp. 792, 801, said:

"While the State may freely select its employees and determine their compensation it would, in my opinion, be clearly unconstitutional for a state to pass legislation which imposed discriminatory burdens on the colored race with respect to their qualifications for office or prescribe a rate of pay less than that for other classes solely on account of race or color. If therefore the state laws prescribed that colored teachers of equal qualifications with white teachers should receive less compensation on account of their color, such a law would clearly be unconstitutional."

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In the later case of Mills v. Board of Education of Ann Arundel County 30 F. Supp. 245, Judge Chestnut applied the principle so stated in holding that a discrimination as to pay of teachers in white and colored schools was violative of the constitutional provision, and that a colored teacher might invoke the power of the court so to declare. This we think is in accord with a long line of decisions which condemn discrimination on account of race in the exercise of governmental power by a state or its agencies. Thus, in Strauder v. West Virginia 100 U. S. 303, exclusion of colored persons from service on petit juries was condemned as violative of the constitutional provision. In Pierre v. Louisiana 306 U. S. 354, the same holding was made with respect to grand juries. In Nixon v. Condon 286 U. S. 73 and Nixon v. Herndon 273 U. S. 536, discriminations with respect to participating in party primaries were condemned. In Lane v. Wilson 307 U. S. 268 and Guinn v. United States 238 U. S. 347 like holdings were made with respect to discrimination relating to the right to participate in elections. Discriminations with respect to the right to own and occupy property were condemned in Buchanan v. Warley 245 U. S. 60; with respect to Pullman accommodations on railroads, in McCabe v. Atchison, Topeka and S. F. R. Co. 235 U. S. 151; with respect to educational facilities, in Missouri ex rel Gaines v. Canada 305 U. S. 337; with respect to the division of school funds in Davenport v. Cloverport 72 F. 689; and with respect to the pursuit of a trade or vocation, in Chaires v. City of Atlanta 164 Ga. 755, 139 S. E. 559.

We come, then, to the second question, i. e. do plaintiffs as Negro teachers holding certificates qualifying them to teach in the public schools of Norfolk have rights which are infringed by the discrimination of which they complain? The answer to this must be in the affirmative. As teachers holding certificates from the state, plaintiffs have acquired a professional status. It is true that they are not entitled by reason of that fact alone to contracts to teach in the public schools of the state; for whether any particular one of them shall be employed to teach is a matter resting in the sound discretion of the school authorities; but they are entitled to