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W.A.No.2121 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.08.2023

CORAM

THE HON'BLE Mr. JUSTICE R.SURESH KUMAR
AND
THE HON'BLE Mr. JUSTICE K.KUMARESH BABU

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- 1.The State of Tamil Nadu,
Represented by Secretary to Government,
School Education (R1) Department,
Secretariat, Chennai – 9.
- 2.The Director of Elementary Education,
College Road, Chennai – 6.
- 3.The District Elementary Education Officer,
Villupuram District,
Villupuram.
- 4.The District Elementary Education Officer,
Vellore District,Vellore.
- 5.The District Elementary Education Officer,
Thiruvallur District,
Thiruvallur.
- 6.The District Elementary Education Officer,
Cheyyaru,
Thriuvannamalai District.

... Appellants

Vs.



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1.A.Vellaiammal
2.M.Parvathi
3.R.Pachiammal
4.P.Muthukumaran
5.Parvathi Ammal

... Respondents

Prayer : Appeals filed under Clause 15 of the Letters Patent Act, praying to set aside the order dated 02.06.2015 in W.P.No.15406 of 2015.

For Appellants : Mr.R.Kumaravel
Additional Government Pleader

For Respondents : Mr.R.Jayaprakash, for R2, R4 & R5

: No appearance for R1 and R3

JUDGMENT

(Judgment of the Court was delivered by R.SURESH KUMAR, J.)

This appeal has been directed against the order passed by the Writ Court dated 02.06.2015 made in W.P.No.15406 of 2015.

2. The 5 contesting respondents were engaged as part time Sweeper or part time Watermen or women in various Government Schools or Panchayat Union Schools. The date of appointment or initial engagement of them have been given as follows:



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<i>Sl.No.</i>	<i>Date of Appointment</i>
1.	02.06.1982
2.	1978
3.	27.12.1985
4.	29.12.1993
5.	26.07.1971

3. Since they have been working for long years as part time Sweepers or Watermen or women, initially though they sought for regularisation of their service on completion of 10 years part time employment under G.O.(Ms).No.22 P&AR Department dated 28.02.2006, at one point of time they requested atleast their services can be treated for the purpose of getting the special time scale of pay i.e. Rs.1300-3000 + Rs.300/- only as Part Time Sweepers.

4. This arrangement was possible based on the various Government Orders viz., G.O.(Ms).No.234 Finance (Pay Cell) Department dated 01.06.2009, G.O.(Ms).No.653 Home Department dated 07.08.2009 and G.O.(Ms).No.385 Finance Department dated 01.10.2010.



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5. In fact, similarly placed persons i.e. Part time employees seeking the said benefit under the various G.Os. referred to above have already approached this Court, where in several cases orders were passed by this Court directing the Government to bring them under the special time scale of pay, accordingly such benefits had been extended to them.

6. Therefore seeking the same relief, these contesting respondents filed the said writ petitions seeking for a mandamus for directing the respondents therein who are the appellants herein to regularise the services of the petitioners in the light of the G.O.(Ms).No.385 dated 01.10.2010 etc.

7. The said writ petition was heard by the Writ Court and ultimately the learned Judge has observed that, though a regularisation has been sought for citing G.O.(Ms).No.22 as referred above, however they are entitled to get atleast the special time scale of pay on par with similarly placed persons in view of the G.Os. referred to above and such kind of orders since have already been passed in number of cases by this Court, such a benefit can be extended to these contesting respondents/ petitioners also and accordingly the learned Judge by impugned order



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dated 02.06.2015 given a direction to the respondents in the writ petition who are the appellants herein to grant the benefit to the respondents/petitioners as provided in G.O.(Ms).No.385 Finance Department dated 01.10.2010.

8. Aggrieved over the same, the appellants preferred this appeal. In support of the appeal, Mr.R.Kumaravel, learned Additional Government Pleader appearing for the appellants would contend that, insofar as the services of the contesting respondents is concerned, they were not appointed by the proper appointing authority, they have been engaged by the School Headmaster concerned only on *ad hoc* basis and in some Schools they might have even been engaged by the Parents Teachers Association, therefore it cannot be treated that they were appointed through a proper method of appointment.

9. Nevertheless on need basis if at all these respondents service had been utilised by the School concerned only as a Part time Sweepers, it would not *ipso facto* make them for claiming any right for seeking regularisation much less under G.O.(Ms).No.22 referred to above.



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10. When that being the position, the very prayer sought for by these respondents before the Writ Court itself ought not to have been entertained.

11. The learned Additional Government Pleader further would contend that, in some of the cases that kind of temporary employees could have been brought under regular time scale of pay or atleast special time scale of pay, but in those cases, those employees were engaged initially on temporary basis but as a full time employee not as a part time employee.

12. Therefore whatever the benefits that has been extended to a temporarily appointed full time employee cannot be extended to part time employee that too engaged by the School Headmaster concerned, therefore no parity cant be sought for by these respondents which has been erroneously considered by the learned Judge who ordered in the said writ petition, therefore the impugned order is liable to be interfered with, he contended.



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13. We have heard the learned counsel appearing for the respondents also.

14. In fact, the issue raised in the writ petition is not first time has come before this Court. The engagement of this kind of Part time Sweepers in various Government Institutions and Organisations is a continuous process. For instance, in Police Station throughout the Tamil Nadu, this kind of Part time Sweepers were engaged to keep the building and premises of the Police Station clean.

15. No doubt, the said job is not a full time job only a part time job, nevertheless their services is indispensable because every day the Police Station premises have to be kept clean, like that, in School concerned, the same position prevails where the School premises should be kept clean, for the purpose the part time Sweeper atleast is required on daily basis. Therefore, not only in the School Education Department but various Departments in the State of Tamil Nadu, this kind of part time Sweepers / employees have been engaged.

16. In order to streamline such engagement and to give some



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immediate pay protection, the Government thought it fit to bring a Policy decision as announced by the Head of the Government i.e., the Chief Minister of the State.

17. Accordingly, two Government Orders have been issued, the first Government Order is G.O.(Ms).No.653 Home Department dated 07.08.2009 wherein the following orders have been passed by the Government:

“3. மாண்புமிகு முதலமைச்சர் அவர்கள் சட்டமன்றப் பேரவையில் காவல் துறை மானியக் கோரிக்கையின் போது தன்னுடைய பிற அறிவிப்புகளுடன் மாநிலத்திலுள்ள வெவ்வேறு காவல் நிலையங்களில் தற்போது 1149 பகுதிநேர துப்புரவுப் பணியாளர்கள் உள்ளனர். இவர்கள் தொகுப்பு ஊதியமாக மாதம் ஒன்றுக்கு ரூ.900/- பெற்று வருகின்றனர். இவர்கள் நீண்ட காலமாக தங்களுக்கு கால முறை ஊதியம் அளிக்கப்பட வேண்டுமென்று கோரிக்கை வைத்த வண்ணம் உள்ளனர். இந்த நீண்ட கால கோரிக்கையினை ஏற்று “காவல் நிலைய துப்புரவாளர்” என்ற பணியிடத்தில் ரூ.1300 - 3000 என்ற கால முறை ஊதிய விகிதத்தில் ரூபாய் 300 தர ஊதியத்துடன் (Grade Pay) 01.08.2009 முதல் இவர்களின் பணிவரன் முறைப்படுத்தப்படும் என அறிவித்துள்ளார்.

4. மாண்புமிகு முதலமைச்சர் அவர்களின் அறிவிப்பிற்கிணங்க காவல் துறையில் பணியாற்றும் 1149 துப்புரவு பணியாளர்களுக்கு திருத்திய சிறப்பு காலமுறை ஊதியவிகிதமான ரூ.1300/- – 3000/- என்ற ஊதிய விகிதம் மற்றும் தர ஊதியம் ரூ.300/- மாதம் ஒன்றிற்கு என நிர்ணயம்



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செய்து அரசு ஆணையிடுகிறது. மேலும் இந்த பணியிடங்கள் காலியாகும் போது அவற்றில் வேறு எவரையும் பணி அமர்த்தக்கூடாது என்றும் காவல் நிலையங்களில் துப்புரவு பணி மேற்கொள்ளும் பணியாளர்களை இனிமேல் ”காவல் நிலைய துப்புரவாளர்கள்” (Police Station Cleaner) என அழைக்கப் பட வேண்டும் என்றும் அரசு ஆணையிடுகிறது. இந்த புதிய பணியிடங்களில் 1300/- - 3000/- என்ற ஊதியவிகிதத்தில் ரூ.300/- தர ஊதியத்துடன் இவர்களின் பணி 1.8.2009 முதல் வரன்முறைபடுத்த அரசு ஆணையிடுகிறது.

5. இந்த ஆணை நிதித்துறையின் அ.சா.கு.எண். 46069/CMPC/09, நாள் 07.08.09 இசைவுடன் வெளியிடப்படுகிறது.”

18. The second Government Order is G.O.(Ms).No.385 Finance (Pay Division) Department dated 01.10.2010, where the following order has been passed:

“2010, செப்டம்பர் திங்கள், 15-ஆம் நாளன்று நடைபெற்ற பேரறிஞர் அண்ணா நூற்றாண்டு நூலக திறப்பு விழாவில் துப்புரவுப் பணியாளர்களின் வாழ்வாதார நலன் கருதி மாண்புமிகு முதலமைச்சர் அவர்கள் வெளியிட்ட அறிவிப்பினைத் தொடர்ந்து அரசு அலுவலகங்கள் மற்றும் உள்ளாட்சி அமைப்புகளில் தினக்கூலி அடிப்படையில் அல்லது தொகுப்பூதியத்தில் குறைந்தபட்சம் மூன்று ஆண்டுகள் பணி முடித்த துப்புரவுப் பணியாளர்களுக்கு கீழ்க்கண்ட நிபந்தனைகளுக்குப்பட்டு ரூ.1300-3000 + ரூ.300/- தர ஊதியம் கொண்ட சிறப்புக் காலமுறை ஊதியம் (-Special Time of Pay) நிர்ணயித்து அரசு ஆணையிடுகிறது. மேலும், இவர்களுக்கு அரசு அலுவலர்கள் தற்போது பெற்றுவரும் அகவிலைப்படியுடன்



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சேர்த்து அரசு அலுவலர்களுக்கு அவ்வப்போது வழங்கப்படும் அகவிலைப்படி உயர்வும் ஆண்டுதோறும் அடிப்படை ஊதியம் மற்றும் தர ஊதியத்தில் முன்று சதவிகிதம் ஆண்டு ஊதிய உயர்வும் சேர்த்து வழங்க இதன்மூலம் அரசு ஆணையிடுகிறது:-

அ) துப்புரவு பணியாளர்கள் தினக்கூலி அடிப்படையில் அல்லது தொகுப்பூதியத்தில் அரசு அலுவலகத்திலோ அல்லது உள்ளாட்சி அமைப்புகளிலோ குறைந்தபட்சம் முன்று ஆண்டுகள் பணியாற்றியிருக்க வேண்டும்.

ஆ) சம்மந்தப்பட்ட துறைத் தலைவர்கள் தங்களது துறையின் கீழ் பணியாற்றும் துப்புரவு பணியாளர்களின் பெயர்கள் / எண்ணிக்கை மற்றும் பணிபுரிந்த காலம் குறித்த பணிப்பட்டியலை சரிபார்த்து தக்க சான்றிடுதல் வேண்டும்.”

19. That apart, orders have been passed time and again by various Departments bringing the Part time Sweepers in a special time scale of pay as stated supra i.e., Rs.1300-3000/- with Grade Pay of Rs.300/-.

20. Therefore even though these contesting respondents sought for a regularisation of their services from their initial engagement as a regular employees for getting all such benefits, the learned Judge restricted the relief only to the extent to bring them on par with others especially under G.O.(Ms).No.385.

21. The learned Judge in fact has relied upon an order passed



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earlier by the very same Judge in W.P.No.33950 of 2014 in the matter of

N.Karuppayee Vs. The Secretary to Government, School Education

Department, Chennai, also the earlier order which has been passed in the

matter of *M.Jaya Vs. The State of Tamil Nadu* having been sought for

review, that review application also has been considered by the very

same Judge, which was disposed by order dated 08th December 2014,

where the learned Judge quoted G.O.(Ms).No.653 and the review

application was dismissed. In fact, pursuant to the said dismissal of the

review application, insofar as the case of the Jaya, who was similarly

placed like the contesting respondents herein, orders have been passed by

the District Educational Officer, Vellore, where the said Jaya was

brought under special time scale of pay of Rs.1300-3000/- with Grade

Pay of Rs.300/-. A proceedings to that effect issued by the DEO, Vellore

on 13.07.2016 also has been placed before us for our perusal. Apart from

this proceeding, several such proceedings for individual cases time and

again had been issued by various Departments including the School

Education Department bringing such part time employees for a special

time scale of pay, such a minimum pay protection should be extended to

these kind of employees that was the Policy decision taken by the

Government which is reflected in the two Government Orders atleast



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cited herein above.

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22. When that being the position, the learned Judge, who relying upon his earlier orders as well as the relevant Government Orders, has directed to extend such benefits to these contesting respondents, therefore such an approach and conclusion reached by the learned Judge cannot be found fault with, therefore we do not find any reasons to interfere with the impugned order, resultantly the intra-Court appeal fails, hence it is dismissed. However, there shall be no order as to costs.

[R.S.K., J.] [K.B., J.]
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Index : Yes/No

Speaking Order : Yes/No

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