

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2018

CORAM:

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

WP.No.27984 of 2013

C.Santhy

... Petitioner

Vs.

- 1.The Director of School Education,
(Higher Secondary)
College Road, Nungambakkam,
Chennai - 600 006.
 - 2.The Chief Educational Officer,
Vellore District,
Vellore - 632 009.
 - 3.The District Educational Officer,
Vellore District,
Vellore - 632 005.
 - 4.The Correspondent,
Vitva Ratna Villa Girls Higher Secondary School,
C.S.I. Diocese of Vellore,
Ranipet, Vellore District.
Pin - 632 401.
- ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 1st and 2nd respondents to regularize the service of the petitioner on her completion of ten years in the post of Part Time Sweeper and to bring the post into Full Time Sweeper post, with all attendant and consequential benefits including the arrears of salary and allowances arising thereof.

For Petitioner : Mr.S.N.Ravichandran

For Respondents : Mr.R.Govindasamy (for R1 to R3)
Special Government Pleader

ORDER

This writ petition is preferred by the petitioner directing the Director of School Education, Chennai / 1st respondent and Chief Educational Officer, Vellore/2nd respondent to regularize the service of the petitioner on her completion of ten years in post of part time sweeper and to bring the post into full time sweeper post with all attendant and consequential benefits including the arrears of salary and allowances arising thereof.

2.Brief case of the petitioner:

The facts of the case is that the petitioner is working in the Viva Ratna Villa Girls Higher Secondary School, Ranipet, Vellore Dist is a recognized, aided, minority institution under T.N.Recognized private schools (Regulation act 1973) On 7.6.1966 the school was upgraded as Girls Higher Secondary School vide R.C.No.195972/W2/77 dated 9.3.1978. One post of part time sweeper was sanctioned vide R.C.No.93/C2/75 Inspectress of Girls School, Chennai and by virtue of the said order the post is being filled up and continuing as such. The petitioner was appointed as a part time sweeper on 9.1.1995 in the fixed pay of Rs.100/- per month and the same was approved District Educational Officer vide proceedings Pa.Mu.No.8578/A/95 dated 20.9.1995 as per the order of the Director of School Education vide Procs.Na.Ka.No.54568/1994 dated 12.7.1995 petitioner being paid a salary of Rs.1220/- per month the appointment has not been regularized.

3.Objections filed by the respondent:

As per G.O.Ms.No.22 P& PR dated 28.2.2006 applies only those who are working in the Government departments in daily wages, completed 10 years of service on 1.1.2006 and also they are qualified for appointment for the post, they are eligible to appointed and regularized their services. The petitioner is working part time sweeper in the aided school. This GO is not applicable to the petitioner.

4.The G.O Ms.No.22 dated 28.2.2006 is not applicable to this petitioner. It contains those who are working in daily wages, completed 10 years of service on 1.1.2006 and also they are qualified for appointment for the post, they are only eligible to appointed in that post and their services has been regularized. The petitioner is a part time sweeper paid on monthly salary of Rs.1220/- per month. The Government issued the G.O.74 P&AR department dated 27.6.2013 noted that the part time sweeper is not eligible for regularize the service.

5.The Government direct that the services of the daily wages employees working in all Government Departments who have rendered 10 years of service as on 1.1.2006 be regularized by appointing them in the time scale of pay of the post. In accordance with the service conditions prescribed for the post concerned subject to their being otherwise qualified for the post.

6.The learned counsel for the petitioner submits that the petitioner was appointed by the 4th respondent / Viva Ratna Villa Girls Higher Secondary School, Ranipet, Vellore as part time sweeper on 9.1.1995 by the competent authority as per the order of the Director of the school education, issued in Na.Ka.No.54568/D2/94 dated 12.7.1995, petitioner being paid a salary of Rs.1220/- per month the appointment has not been regularized.

7.The learned counsel for the petitioner submits that the Government of Tamilnadu issued several G.Os in the matter of regularization of such part time employees on completion of 5 years / 10 years of service in the temporary/part time/daily wages and to being them under the regular employment by fixing scale of pay applicable to the post on completion of 5 years/10years service and certain decision and G.Os.

8.The above decision was confirmed by the Division bench in W.A.No.230 of 2009 dated 3.8.2009 and the special leave petition filed by the department rejected by the order of Apex Court dated 1.2.2010. Implemented vide G.O.Ms.No.141 School Education Department, dated 19.5.2010 regularizing the service of the part time sweeper.

9.The learned counsel for the petitioner submits that the petitioner the G.O.Ms.No.136 School Education (R1) Department, dated 13.5.2010 - Regularizing the service of part time sweeper working in the school. G.O.Ms.No.141 School Education (R1) Department dated 19.5.2010 regularizing the service of part time sweeper working in the school. G.O.Ms.No.1111, School Education (R1) department, dated 8.5.2012, regularizing the service of part time employee.

10.In view of the above orders, the petitioner is entitled to have the benefits of the G.Os for regularization of service as Full Time Employee in view of service rendered from 9.1.1995 approved w.e.f. 1.6.1995 on completion of 10 years of service in

the part time sweeper. But, no such order is issued so far despite several representations. Therefore the non regularization of service of the petitioner is highly arbitrary and discriminatory violating articles 14 and 16 of the Constitution of India.

11.The learned counsel for the petitioner cited the following decisions in support of their contentions:

1) W.P.No.13168 of 2013 High Court, Madras, (The Commissioner, Corporation of Chennai Vs The Secretary to Government Municipal Administration and water supply)

2) (2008) 10 SCC 698 (Divisional Manager, New India Assurance Company Ltd., Vs. A.Sankaralingam)

3) AIR 1977 SCC 1677 -1977 LAB I.C. 908

4) SCC - Civil appeal Nos. 2730-273 of 2014 - (Secretary to Govt. School Education, Chennai Vs R.Govindasamy and others)

5) G.O.Ms.199 dt 8.6.2011

6) In the High Court of Judicature, Madras W.P.No.9289 of 1986 (K.Duraisamy and Tamilnadu Electricity Board and others)

7) (2015) 8 SCC 265 (Amarkantrai Vs State of Bihar and others)

8) (2008) 9 SCC 24 (Maharaj Krishan Bhatt and another Vs State of Jammu and Kashmir and others)

9) In the High Court of Judicature, Madras W.P.No.18126 of 2008 (M.Kumar Vs the Director of School Education and others)

10) In the High Court of Judicature, Madras W.P.No.230 of 2009 (The Director of School Education Vs V.Kumar)

12.The learned Special Government Pleader appearing for the respondents 1 to 3 opposed the submissions of the petitioner and sought for dismissal of the writ petition.

13.I heard Mr.S.N.Ravichandran, learned counsel for the petitioner and Mr.R.Govindasamy, learned Special Government Pleader for the respondents 1 to 3 and perused the entire materials available on record.

14.The prayer in the writ petition is to regularize the services of the petitioner. As per the judgments cited, the wrong decision in one case could not be extended to others. Further once a judgment had attained a finality, its benefit ought to have been extended to other similarly situated persons.

15. In fairness and in view of the facts that the respondents ought to have gracefully accepted the decision by granting similar benefits to the petitioners. There is absolutely no justification for denying the permanent post to the petitioner, notwithstanding the fact that the petitioner made several representations to the respondents requesting to appoint permanently. In view of the above discussion, the petitioner is entitled to claim relief in the writ petition.

16. In the result:

a) This writ petition is allowed;

b) The respondents 1 and 2 are directed to regularize the service of the petitioner on her completion of ten years in the post of Part Time Sweeper and to bring the post into Full Time Sweeper post, with all attendant and consequential benefits, including the arrears of salary and allowances arising thereof;

c) The said exercise shall be done within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (CS V)

//True Copy//

Sub Assistant Registrar

To

1. The Director of School Education,
(Higher Secondary)
College Road,
Nungambakkam,
Chennai - 600 006.

2. The Chief Educational Officer,
Vellore District,
Vellore - 632 009.

3. The District Educational Officer,
Vellore District,
Vellore - 632 005.

+3cc to Mr.S.N.Ravichandran, Advocate Sr.21977

WP.No.27984 of 2013

srg 14/03/2019