

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.18558 of 2013

M.Chinnammal

... Petitioner

Vs

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

2.The Chief Educational Officer,
Thirupur District.

3.The District Educational Officer,
Thirupur District.

... Respondents

Petition is filed under Article 226 of the Constitution of India for the issuance of writ of certiorarified mandamus calling for the records from the first respondent pertaining R.C.No.53690/D1/E2/2012 dated 15.3.2013 and quash the same and consequently, direct the respondents to implement the G.O.(Ms) No.111, dated 09.5.2012 and to its consequential G.O.(Ms) No.247, dated 03.10.2012 passed by the School Education Department and provide monetary benefits to the petitioner.

For Petitioner : Mr.P.Vijendran

For Respondents: Mr.R.Govindasamy
Addl. Government Pleader

ORDER

Originally, the petitioner has filed this writ petition seeking a writ of mandamus directing the respondents to implement G.O.Ms.No.247, dated 03.10.20012 and to provide monetary benefits to the petitioner. Stating that pending writ petition, the first respondent issued the impugned proceedings dated 15.3.2013, the petitioner filed WMP.No.21889 of 2017 seeking to amend the prayer made in the writ petition. By an order dated 11.8.2017, WMP.No.21889 of 2017 came to be allowed

and the prayer was accordingly, amended. Now the prayer of the writ petition reads thus:

"For the reasons stated in the accompanying affidavit, it is therefore prayed that this Hon'ble Court may be pleased to issue appropriate Writ, Orders or Directions and in particularly Writ of Certiorarified Mandamus call for the records from the first respondent pertaining R.C.No.53690/D1/E2/2012 dated 15.3.2013 and quash the same and consequently, direct the respondents to implement the G.O.(Ms) No.111, dated 09.5.2012 and to its consequential G.O.(Ms) No.247, dated 03.10.2012 passed by the School Education Department and provide monetary benefits to the petitioner and pass such other further order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case, award cost and thus render justice."

2. I heard Mr.P.Vijendran, learned counsel for the petitioner and Mr.R.Govindasamy, learned Additional Government Pleader for the respondents and also perused the materials available on records.

3. According to the petitioner, she was appointed as Sweeper in the School Education Department twenty years ago and since the petitioner and other similarly placed were not regularised, they filed W.P.No.29412 of 2010, in which the petitioner was arrayed as 60th petitioner and sought for mandamus to direct the respondents to regularise their service. By an order dated 23.12.2010, this Court directed the petitioners in the aforesaid writ petition to submit individual representation to the first respondent and accordingly, on 03.2.2011, the petitioner sent a representation to the first respondent. Since the first respondent did not consider her representation, she filed Contempt Petition No.1718 of 2011 and similarly placed persons have also filed Contempt Petitions. Pending contempt proceedings, the Government issued G.O.Ms.No.111, School Education Department, dated 9.5.2012, regularising similarly situated persons by granting the benefit only from the date of the said Government Order. Since the said Government Order was not in accordance with the order of this Court, this Court issued statutory notice to the Principal Secretary to Government (Education). On 24.8.2012, the Principal Secretary to Government (Education) has given an undertaking before this Court to take steps to issue suitable amendment to G.O.Ms.No.111 providing monetary benefits after completion of 10 years of service. Pursuant to the undertaking, G.O.Ms.No.111 was amended on 3.10.2012 as G.O.Ms.No.247 and the Contempt Petition was closed. Despite the undertaking and the order of this Court, the first respondent has not provided the benefit to the

petitioner. Hence, she has filed the present writ petition.

4. Prior to the amendment of the prayer, the respondents 1 to 3 have filed the counter stating that pursuant to the orders of this Court W.P.No.29412 of 2010, the representation of the petitioner was rejected by the department vide order dated 15.3.2012. It is stated that G.O.Ms.No.111, dated 9.5.2012 was issued regularising the services of the part time worker who was working in the Government schools only and the benefit in the said G.O. was not extended to the private schools. The petitioner was not eligible to get regularised based on G.O.Ms.No.111 on the ground that she was appointed by the Management without following the communal roster and employment exchange seniority. It is also stated that based on G.O.Ms.No.247, persons who were working in the Government schools were regularised and posted to the vacant post, which was already sanctioned by the Department. But the petitioner's school was a private minority school and there was no regular post sanctioned by the Department.

5. The third respondent filed additional counter stating that the petitioner was working as a part time Sweeper in Carmel Girls Higher Secondary School, Kankeyam from 01.11.1981 which is a private aided minority school. The respondents granted salary only to the sanctioned post of teachers and staff appointed in the school. The petitioner was appointed by the school in a non-sanctioned post. Hence, the petitioner cannot claim regularisation.

6. It appears that earlier, the petitioner and 73 others have filed W.P.No.29412 of 2010 seeking a writ of mandamus directing the respondents therein to regularise the service in the light of the orders passed by the first respondent in G.O.Ms.No.505, Finance (K.Ka.2) Department, dated 14.10.2009 and G.O.(2D) No.32, Finance (Ka.Ka.2) Department, dated 26.3.2010, G.O.Ms.No.88, School Education (R1) Department, dated 1.4.2010 and the order passed in W.A.No.1520 of 2010, dated 25.10.2010 with effect from the date of their initial appointments with all monetary and service benefits.

7. By an order dated 23.12.2010, the said writ petition was disposed of. The operative portion of the order reads as under:

"In such view of the matter, the writ petition is disposed with a direction against the petitioners to send individual representations to the second respondent within one week from the date of receipt of a copy of this order and thereafter, the second respondent shall consider the representation of the petitioners in the light of the judgment of the Division Bench of this Court in The Director of School Education and others v. P.Subramani, supra,

the order of this Court in M.Kumar v. The Director of School Education and others, supra, and taking note of the government orders which enable the regularisation of services where the person has been in employment for long period, and pass appropriate orders within eight weeks. No costs. Consequently, M.P.No.1 of 2010 is closed."

8. On 3.2.2011, the petitioner had made a representation to the Director of School Education. Since the first respondent disobeyed the order passed in W.P.No.29412 of 2010, the petitioner filed Contempt Petition No.1718 of 2011. It appears that similarly placed persons have also filed Contempt Petitions. On 24.8.2012, when the Contempt Petition was taken up for hearing, the Principal Secretary of Education Department appeared before the Court and gave undertaking that insofar as the petitioners who have obtained orders from this Court for regularisation after completion of 10 years of service are concerned, steps will be taken by issuing suitable amendment to G.O.Ms.No.111 dated 9.5.2012 providing them monetary benefits after completion of 10 years of service.

9. G.O.Ms.No.111, dated 9.5.2012 relates to regularisation of similarly situated persons, but granted the benefit only from the date of the said Government Order i.e., from 9.5.2012. Pursuant to the undertaking given by the Education Department Principal Secretary, G.O.Ms.No.111 was amended by issuing G.O.Ms.No.247, dated 30.10.2012 giving monetary benefits after completion of 10 years of service. Since the first respondent has not taken steps to extend the benefit of G.O.Ms.No.247, dated 3.10.2012 to the petitioner, the petitioner has filed the present writ petition on 03.7.2013.

10. According to the respondents, the grievance of the petitioner has been considered by the first respondent and issued the impugned order dated 15.3.2013 informing the petitioner that there was no possibility in implementing the order of the Court dated 23.12.2010 passed in W.P.No.29412 of 2010, as the Carmel Girls Higher Secondary School, Kankeyam was a private minority aided school, which has no regular post of Sweeper. On a perusal of the impugned order, it is seen that the impugned order has been marked to the petitioner.

11. In this case, no material has been produced by the petitioner to show that the post held by the petitioner was regular post. At the same time, the respondent authorities have also failed to produce any record to show that Carmel Girls Higher Secondary School, Kangeyam is a private minority aided school, which has no regular post of Sweeper.

12. It is to be noted that when W.P.No.29412 of 2010 was taken up for hearing, the respondent authorities have not stated that the petitioner was not entitled to get regularization, as the post is a non-sanctioned post. During contempt proceedings also the respondent authorities have not stated that the petitioner was working in a non-sanctioned post. While filing counter in the present writ petition, the respondent authorities have stated so.

13. In counter, the respondents admit that the petitioner was working as Sweeper (part-time) in Carmel Girls Higher Secondary School, Kankeyam from 1.11.1981. However, the respondents contended that the said school is a private aided minority school and the salary grants to the teachers and staff who were appointed in the posts sanctioned by the Government of Tamil Nadu were paid by the Government of Tamil Nadu. It is the say of the respondents that the petitioner was appointed in the post of part time Sweeper, which holds the consolidated pay and it was not a regular post covered under the regular time scale basis.

14. On a perusal of G.O.Ms.No.111, dated 9.5.2012, it is seen that the Department has regularised the services of the part time workers who worked in the Government schools only and the said Government Order was not extended to the private schools, particularly private aided minority schools. The private minority school appointment was not covered by the procedure of appointment followed by the Government.

15. It is clear that based on G.O.Ms.No.247, dated 3.10.2012 and G.O.Ms.No.111, dated 9.5.2012, persons who were working in Government schools alone were regularised and posted to the vacant post which was already sanctioned by the Department. The petitioner is differently placed person and therefore, she is not entitled to get the benefit of G.O.Ms.No.111, dated 9.5.2012 and G.O.Ms.N.247, dated 3.10.2012. Though the first respondent has passed the impugned order belatedly, this Court finds no reason to interfere with the same in the present proceedings for the reason that the reading of the aforesaid Government Orders would show that benefit was not extended to the private aided minority schools. The petitioner has failed to produce any record to show that G.O.Ms.No.111, dated 9.5.2012 and G.O.Ms.No.247, dated 3.10.2012 will be applicable to the school in which the petitioner was working.

For the foregoing reasons, the writ petition is dismissed.
No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

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

2.The Chief Educational Officer,
Thirupur District.

3.The District Educational Officer,
Thirupur District.

+lcc to Mr.P.Vijendran, Advocate sr.no.65244

W.P.No.18558 of 2013

nr 03/10/2018

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