

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
DATE : 20.12.2018

CORAM:  
THE HON'BLE DR. JUSTICE S.VIMALA

Writ Petition No.33634 of 2018  
& WMP Nos.39040 & 39045 of 2018

1.Tamil Nadu Education Department  
Conservancy works Welfare Association  
Rep. by its President,  
Mr.G.Murugan, 5th Ward Palanisamy street,  
Keripatti post,  
Athur Taluk, Salem Dist. .. Petitioner

- Vs -

- 1.The State of Tamil Nadu  
Rep. by the secretary to Government  
School Education Department,  
Fort St.George, Chennai - 600 009.
- 2.The State of TamilNadu  
Rep. by the secretary to Government,  
Department of Finance(salary section),  
Fort St.George Cennai 600 009
- 3.The Director of school Education,  
Directorate of school Education,  
DPI Compound,College Road, Chennai 600 006 .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus to call for the records relating to the 1<sup>st</sup> Respondent in G.O.(Ms) No.47 school Education (R.1) Department dated 2.3.2012 and quash clause 2(i) and (ii) of the said GO, in so far as it fixed the salary of conservation workers (sweepers) working in Government High Schools and Government Higher secondary schools at Special time scale of pay of Rs.1300-300 grade pay of Rs.300/- and to quash the same, as arbitrary and violative of Article 14 of the Constitution of India and consequently to direct the respondents to fix the regular time scale of pay to the members of the petitioner association who are working as Conservation Workers (Sweepers) in Government High Schools and Government Higher Secondary Schools, pursuant to G.O.Ms.No.47 School Education (R-1) Department, dated 02.03.2012 on par with conservation workers (Sweepers) working in the Education Department of the Government of Tamil Nadu who are receiving regular time scale of pay of Rs.4800 + Rs.1300/- grade pay from the date of initial appointment.

For Petitioner : Mrs.Nalini Chidambaram, Sr. Counsel, for,  
M/s. C.Uma

For Respondents: Mrs. P.Kavitha, Govt. Advocate

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O R D E R

The Tamil Nadu Education Department, Conservancy Works Welfare Association, has filed this writ petition, to quash clause 2 (i) and (ii) of G.O.Ms.No.47, School Education (R-1) Department, dated 02.03.2012, and to fix the time scale of pay on par with workers in the Government high schools and the Government higher secondary schools.

2. Heard both sides.

3. The learned senior counsel appearing for the petitioner would submit that the School Education Department, Scavengers Welfare Association, belonging to the Pudukottai District, has already filed a writ petition before the Madurai Bench of the Madras High Court and the Court by the order dated 25.01.2018 has held that the petitioner's Association will be entitled to the benefit of the Revision and placement in the higher pay scale notionally from the date of the appointment and with monetary effect from the date of passing (dated 25.01.2018) of the order.

3.1. Relying upon the judgement reported in (2017) 1 SCC 148 (State of Punjab and others v. Jagjit Singh and others) it was submitted by the learned senior counsel appearing for the petitioner that even temporary employees will be entitled to draw wages at the minimum of the pay scale, as extended to the regular employees holding the same post.

3.2. The allegation made by the petitioner is that the petitioner is the Welfare Association, which has been formed to espouse the cause of sweepers / conservancy workers, appointed in the Government High Schools and Higher Secondary Schools, pursuant to G.O.Ms.No.47, dated 02.03.2012. The petitioner is registered under the Tamil Nadu Societies Registration Act, 1975, on 31.07.2017. G.O.Ms.No.385, dated 01.10.2010 was issued by the second respondent for fixing special time scale of pay with grade pay at Rs.1300-3000-300 for the daily wage employees who were working on consolidated pay pursuant to the announcement made by the Hon'ble Chief Minister of Tamil Nadu, on 15.09.2010, taking note of the welfare of the Conservation Workers.

3.3. Thereafter, G.O.Ms.No.47, dated 02.03.2012 was issued pursuant to the announcement made by the Hon'ble Chief Minister dated 26.08.2011 in the assembly with the object of maintaining environmentally clean and healthy atmosphere in the Government High Schools and Government Secondary Grade Schools, by creating 5000 non-teaching posts.

4. The School Education Department Scavengers Welfare Association filed W.P.(MD) No.17663 of 2014 before the Madurai Bench of this Court. By the order dated 25.01.2018, the said writ petition was allowed applying the principle of equal pay for equal work.

5. The learned senior counsel appearing for the petitioner would submit that the petitioner's Association Members are entitled to the benefit, in terms of the earlier order passed by the Madurai Bench of this Court.

6. So far as the prayer of quashing of clauses 2 (i) and (ii) of G.O.Ms.No.47, School Education (R-1) Department, dated 02.03.2012, in so far as it fixed the salary of conservation workers (sweepers) working in Government High Schools and Government Higher secondary schools at Special time scale of pay of Rs.1300-300 grade pay of Rs.300/-, is concerned, the Madurai Bench of this Court has already answered that issue holding as follows:-

"8. This Court is of the view that the principle of equal pay for equal work enshrined in Articles 14 and 16 of Constitution of India is too sacred to be defeated by invoking the principle of estoppel. The Hon'ble Supreme Court of India in decision reported in (2017) 1 SCC 148? State of Punjab and others vs. Jagjit Singh and others held that even temporary employees will be entitled to draw wages at the minimum of the pay scale as extended to the regular employees holding the same post. The members of the petitioner's Association are discharging the duty of Scavengers in the School Education Department but other Scavengers working in the very same department have been placed in the higher time scale of pay. This is patently discriminatory. When two employees are doing the same work, both will have to be paid the very same salary. The question of waiver will not arise in these cases. Fundamental rights cannot be waived. It has held that the right of equal pay for equal work is a fundamental right. Article 39(d) of the Constitution of India states that the State shall direct its policy towards securing that there is equal pay for equal work for both men and women. Though this directive principle of State policy is more in the context of gender equity, the philosophy behind it can be applied to uphold the general principle of equal pay for equal work. This Court considering a similar issue in the case of Colleges struck down the discriminatory approach of the department. Such an order was passed on 19.09.2014 in W.P. No.7884 of 2013. Excepting that the petitioners in W.P. (MD).No.7884 of 2013 are working in Colleges as Scavengers and the members of the petitioner's



Association are working as Scavengers in schools, there is no other difference. The case of the members of the petitioner's Association therefore deserves to be allowed."

7. The learned Government Advocate appearing for the respondents would submit that, as against the order, dated 25.01.2018, passed by the Madurai Bench of this Court, an appeal is pending before the Court, but no order of stay has been produced.

8. Under the stated circumstances, the contention of the learned Government Advocate for the respondents that this writ petition cannot be entertained, as the Appeal is pending in the connected case, cannot be accepted. The objections raised are rejected. The writ petition is ordered, in terms of the order, dated 25.01.2018, passed in W.P.(MD) No.17663 of 2014, by the Madurai Bench of this Court. No costs. Consequently, the connected WMPs are closed.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

srk

To

- 1.The State of Tamil Nadu  
Rep. by the secretary to Government  
School Education Department,  
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Department of Finance(salary section),  
Fort St.George, Chennai 600 009
- 3.The Director of school Education,  
Directorate of school Education,  
DPI Compound, College Road, Chennai 600 006.

+1cc to M/s.C.Uma, Advocate, S.R.No.89172  
+1cc to the Government Pleader, S.R.No.89443

Writ Petition No.33634 of 2018  
& WMP Nos.39040 & 39045 of 2018

NMI (CO)

rrs 06/03/2019