



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P (MD)No.1731 of 2018

and

WMP(MD)No.1845 of 2018

K.Sankar Ganesh

... Petitioner

Vs.

The Government of Tamil Nadu,
Rep.by its Principal Secretary,
Department of School Education,
Fort St. George,
Chennai - 600 009.

... Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the respondent in Letter No.16435/Pa.Ka.4(1)/2017 dated 27.12.2017 and quash the same and consequently direct the respondent to re-fix the petitioner's scale of pay from Rs.1300-3000+300 G.P to Rs.4800-10000+1300 GP with effect from 26.11.2012.

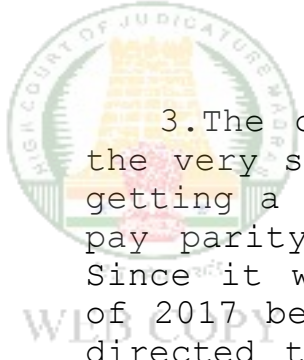
For petitioner : Mr.R.V.Rajkumar

For respondent : Mr.J.Gunaseelan Muthaiah,
Additional Government Pleader

O R D E R

Heard the learned counsel on either side.

2.The petitioner after completing his school education got himself registered with the employment exchange. His name was forwarded for the post of Watchman and Sweeper in the schools coming under the first respondent. The petitioner was appointed as a Sweeper on 23.11.2012 in the special time scale of pay of Rs.1300-3000 + 300 G.P. The petitioner is working as a Sweeper/Scavenger in Government Higher Secondary School, Melathayilpatti, Thoothukudi. The post of Sweeper comes under the Class IV of the basic service along with other categories.



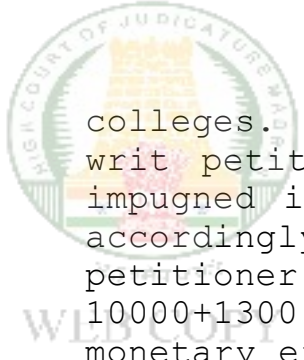
3.The case of the petitioner is that the Sweepers working in the very same department as well as in the other departments are getting a pay scale of Rs.4800-10000+1300 GP. Therefore, seeking pay parity, the petitioner gave representations in this regard. Since it was not considered, the petitioner filed WP(MD)No.10813 of 2017 before this Court. This Court by order dated 09.06.2017 directed the respondent to consider his representations and pass orders on merits and in accordance with law. Pursuant to the direction given by this Court, the respondent passed the impugned order dated 27.12.2017 negating the petitioner's request. Therefore, this Writ Petition came to be filed.

4.The only reason set out in the impugned order is that the Government issued G.O.Ms.No.47, School Education Department dated 02.03.2012 creating a certain number of posts on a particular special time scale of pay. The Sweepers/Scavengers were to be paid 1300+3000 + 300 GP. The petitioner was appointed only in the post created under the said Government order with the said special time scale of pay that was indicated both in the call letter as well as in the appointment order. Therefore, it is not possible to now revise the petitioner's scale of pay on par with the other similarly placed persons.

5.The learned Additional Government Pleader appearing for the respondent submitted that the reason set out in the impugned order is very much sustainable in law.

6.This Court is unable to agree. The Hon'ble Supreme Court in the decision reported in (2017) 1 SCC 148 (State of Punjab vs. Jagjit Singh) once again reiterated the principle of equal pay for equal work. In the present case, it is not in dispute that the petitioner is discharging his duties attached to the post of Sweeper/Scavenger. However, Sweepers/Scavengers working in the very same department are getting higher scale of pay of Rs.4800-10000+1300. It is not the case of the respondent that the petitioner is doing lesser work. That the petitioner is doing the same kind of work is not in doubt. The only reason assigned by the respondent for denying the petitioner's request is that even when he was appointed it was informed to the petitioner that he would be given only the special time scale of pay of Rs.1300-3000 + 300 GP. In the decision reported in AIR 1959 SC 149 (Basheshar Nath vs. The Commissioner of Income Tax, Rajasthan & Another), it was held that the question of waiver of fundamental right will not arise.

7.The principle of estoppel will not arise in the petitioner's case. This is because the petitioner is seeking to enforce his fundamental right guaranteed under Article 14 of the Constitution of India. The issue on hand is no longer res integra. A learned Judge of this Court by order dated 19.09.2014 in WP(MD)No.7884 of 2013 granted similar relief to Sweepers/Scavengers working in



colleges. Applying the reasons set out in the said order this writ petition has to be necessarily allowed. Hence, the order impugned in this writ petition is liable to be quashed. It is accordingly quashed. The respondent is directed to re-fix the petitioner's scale of pay from Rs.1300-3000+300 G.P to Rs.4800-10000+1300 GP with notional effect from 26.11.2012 and with monetary effect from the date of filing of this writ petition ie., 28.01.2018. Such an order shall be passed within a period of twelve weeks from the date of receipt of a copy of this order.

8.This writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar

To

The Principal Secretary,
Government of Tamil Nadu,
Department of School Education,
Fort St. George, Chennai - 600 009.

+ 1 cc TO Mr.R.V.Rajkumar , Advocate in SR No. 55504
+ 1 cc TO The Special Government Pleader in SR No. 55936

SKM

AE/MK/SKN RSK/SAR1/01.06.2018/3P/4C

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