



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

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W.P.(MD) No.17663 of 2014andM.P.(MD). No.2 of 2014 and W.M.P.(MD) 4635 of 2016

School Education Department
Scavengers Welfare Association,
Rep. by its Secretary,
R.Murugesan,
Mookampatti,
Sampattividuthi Post,
Pudukkottai District.

.. Petitioner

Vs.

The Principal Secretary,
School Education Department,
Secretariat, Fort St. George,
Chennai.

... Respondent

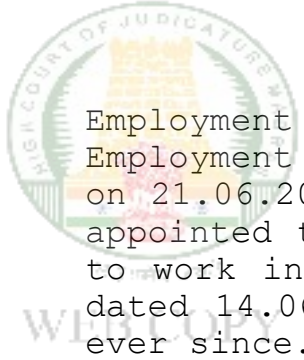
PRAYER: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for records pertaining to the G.O.(Ms.).No.47, dated 02.03.2012 by the respondent in portion so far as special time scale to the post of Scavengers and quash the same as illegal and arbitrary and consequently direct the respondent to fix the regular time scale of pay to Scavengers appointed as per G.O.47, dated 02.03.2012 on par with the existing Scavengers who are receiving regular time scale of pay i.e., Rs.4,800/- + Rs.1,300/- as Grade Pay and pay the salary from the date of appointment.

For Petitioner : Mr.K.Baalasundharam

For Respondent : Mr.J.Gunaseelan Muthiah,
Additional Government Pleader.**ORDER**

Heard Mr.K.Baalasundharam, learned Counsel for the petitioner and Mr.J.Gunaseelan Muthiah, learned Additional Government Pleader appearing for the respondents.

2. The challenge in this writ petition is to Clause 2 (i) of G.O.(Ms).No.47, School Education (R.1) Department, dated 02.03.2012 insofar as it fixes the special time scale of pay of Rs.1,300-3,000+Grade Pay Rs.300/- to the Scavengers appointed pursuant to the said Government Order. The members of the petitioner's Association had passed 10th Standard and registered themselves with the District



Employment Exchange, Pudukottai. They were all sponsored by the Employment Exchange. They were called for certificate verification on 21.06.2012. The concerned authority in the Education Department appointed the members of the Petitioner's Association as Scavengers to work in various Schools in Pudukottai District vide proceedings dated 14.06.2012. The petitioners had joined duty and are working ever since.

3. The grievance of the members of the petitioner's Association is that their scale of pay was fixed only as Rs.1,300-3,000+Grade Pay Rs.300/-. Other Scavengers working in the Education Department are in the pay scale of Rs.4,800-10,000 + Grade Pay Rs.1,300/-. Therefore, they represented to the authority contending that the principle of equal pay for equal work must be applied and that they should also be placed in the regular time scale of pay of Rs.4,800-10,000 + Grade Pay Rs.1,300/-. Since their request was not accepted, they have filed this writ petition.

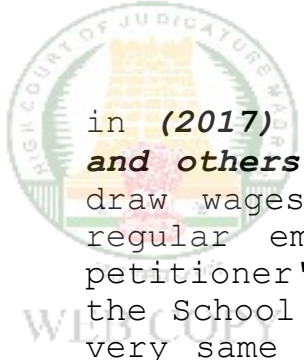
4. The Government had filed its counter affidavit opposing the prayer made in the writ petition. According to the averments in the counter affidavit, following the announcement made by the Chief Minister on the floor of the Legislative Assembly under Rule 110, proposals were submitted for sanction of 5,000 non-teaching posts such as Sweepers, Scavengers and watchmen. The Government considered the said proposal and decided to sanction the said posts. In this regard G.O.(Ms).No.47, School Education (R.1) Department, dated 02.03.2012 was issued. The said Government Order itself states that the Scavengers appointed pursuant to the recruitment process would be paid in the special time scale of pay of Rs.1,300-3,000+Grade Pay Rs.300/-. When the members of the writ petitioner's Association were appointed in the recruitment process, which was held pursuant to the said G.O.(Ms).No.47, School Education (R.1) Department, dated 02.03.2012, they are estopped from now contending that their scale of pay was improperly fixed.

5. The learned Additional Government Pleader appearing for the respondent would contend that the member of the writ petitioner's Association would not have got appointment as Scavengers but for the aforesaid G.O.(Ms).No.47, School Education (R.1) Department, dated 02.03.2012.

6. The plea of estoppel is set out in the Paragraph No. 8 of the counter affidavit. The learned Additional Government Pleader appearing for respondent reiterated the aforesaid grounds.

7. Heard the submissions of the learned counsel on either side.

8. This Court is of the view that the principle of equal pay for equal work enshrined in Article 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.

9. The offending Clause 2(i) in the impugned G.O.(Ms). No.47, School Education (R.1) Department, dated 02.03.2012 is struck down as unconstitutional. A direction shall issue to place the Scavengers who were appointed as per G.O.(Ms).No.47, School Education (R.1) Department, dated 02.03.2012 on par with the other scavengers working in Education Department and who are receiving the regular time scale of pay i.e Rs.4,800-10,000 + Grade Pay Rs.1,300/- from the date of their appointment. The members of the petitioner's Association will be entitled to the benefit of this Revision and placement in the higher pay scale notionally from the date of their appointment and with monetary effect from the date of passing of this order. The respondent is directed to issue appropriate orders in this regard within a period of eight weeks from the date of receipt of a copy of this order.

10. This Writ petition is allowed, accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar



To:
The Principal Secretary,
School Education Department,
Secretariat, Fort St. George,
Chennai.

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+1 cc to Mr.K.Baalasundharam, Advocate, SR.No.44275

+1 cc to The Spl. Government Pleader, SR.No.44755

W.P.(MD) No.17663 of 2014
25.01.2018

KMI/PMU
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