



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.01.2018

CORAM:

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THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

W.P. (MD) Nos. 18211 of 2014, 2986 of 2015 and 21045 of 2017
and

M.P. (MD) Nos. 1 of 2014 and 1 & 3 of 2015

K. Shantha

... Petitioner in all W.Ps

Vs.

1. The District Educational Officer,
Ramnad District.

2. The Assistant Elementary Educational Officer,
Elementary Educational Office,
R.S. Mangalam, Ramnad District. ... Respondents 1&2 in
WP (MD) Nos. 18211/2014 and 2986/2015
and 3rd&4th Respondents in WP (MD) No. 21045/2017

3. The Director of School Education,
College Road, Chennai.

4. The Joint Director of School Education,
(Employees Section)
College Road, Chennai.

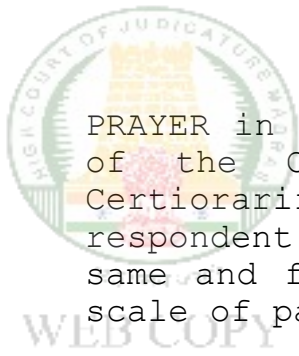
... 1st and 2nd Respondents in W.P. (MD) 21045 of 2017

5. The Secretary to Government,
School Education Department,
Chennai.

(5th respondent impleaded as suo muto in W.P. (MD) 21045/2017
vide order dated 31.01.2018, by this Court)

... 5th Respondent in W.P. (MD) No. 21045 of 2017

PRAYER in W.P. (MD) No. 18211 of 2014: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the 2nd respondent to regularize the service of the petitioner in special time scale of pay as Sweeper as per G.O. No. 22 Personal and Administrative Reforms Department dated 28.02.2006.



PRAYER in W.P.(MD)No.2986 of 2015: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the 2nd respondent in his proceedings in Na.Ka.No.130/A1/2014 and quash the same and further direct the 2nd respondent to pay the special time scale of pay to the petitioner.

PRAYER in W.P.(MD)No.21045 of 2017: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the 2nd respondent to regularize the service of the petitioner in special time scale of pay as sweeper as per G.O.No.22 Personnel and Administrative Reforms Department, dated 28.02.2006.

For Petitioner : Mr.PT.S.Narendra Vasan

For Respondents : Mrs.S.Srimathy
Special Government Pleader

ORDER

The petitioner has been working as a Sweeper in the office of the Assistant Elementary Educational Officer, Ramanathapuram District since 1989 by virtue of the order issued in her favour by the fourth respondent. The petitioner has been working ever since. The petitioner was granted time scale of pay and even paid arrears amount to the tune of Rs.1,03,415/- Actually, without even passing an order regularizing the petitioner's service, she could not have been placed in the time scale of pay. Therefore, an order of recovery was issued. Questioning the same, the writ petitioner filed W.P.(MD)No.2986 of 2015 and this Court granted an order of interim stay also.

2.But, then, the authorities had asked the writ petitioner that if she refunded the said amount to the department, her case for regularisation would be favorably considered. Believing the said assurance, the petitioner repaid the said amount. Thereupon, the District Educational Officer, Ramanathapuram District sent a communication dated 30.03.2016 to the Joint Director of School Education recommending the case of the writ petitioner for regularisation with effect from 18.09.1989.

3.Now, there are three writ petitions before this Court. In W.P.(MD)No.18211 of 2014, the petitioner seeks regularisation of her services in the said time scale of pay as per G.O.Ms.22, dated 28.02.2006. In W.P.(MD)2986 of 2015, the order of recovery dated 13.06.2014 is under challenge. In W.P.(MD).No.21045 of 2017, the petitioner again seeks regularisation of her services in terms of G.O.Ms.22 dated 28.02.2006. At the very out set, it can be clarified that G.O.Ms.22, will not apply to the writ petitioner.

4.The said G.O. Applies in the case of employees working on daily wages. If the said employees had put in 10 years of service as on 01.01.2006, their services have to be regularised. The writ



petitioner obviously is not such a person. Therefore, the prayer sought for in the writ petitions cannot obviously be granted. However, this Court is entitled to mould the relief.

5. It is not in dispute that the writ petitioner has been working as a Sweeper since 1989. The Government had issued G.O.Ms.385 dated 01.10.2010 for such persons. The said G.O can be invoked if the person has been working as a Sweeper either on daily wages or on consolidated pay. In this case, the writ petitioner was working on a consolidated pay. Since it is only the Government, which has to pass an order, the Secretary to Government School Education Department, Chennai, is *suo muto* impleaded as the fifth respondent in W.P.(MD)21045/2017. The Government/fifth respondent is directed to regularise the service of the writ petitioner in terms of G.O.385 dated 1.10.2010 and also place the writ petitioner at appropriate time scale of pay. Such an order shall be issued within a period of eight weeks from the date of receipt of a copy of this order.

6. It is also seen that the writ petitioner was paid a sum of Rs.1,03,415/-. It is not the case of the respondent that the petitioner made any misrepresentation and obtained the said pecuniary benefit. The authorities had chosen to place the writ petitioner on certain time scale of pay and pay the said amount towards arrears. Thereafter, recovery order was passed. The said order is challenged in W.P.(MD)No.2986/2015. Even though interim stay was granted, the authorities have managed to persuade the petitioner to pay the said amount. The Hon'ble Supreme Court of India in the case of *State of Punjab Vs. Rafiq Masih* reported in (2015)4 SCC 334 held that if the employee is not at fault, recovery cannot be permitted in certain cases. The parameters laid down in the above said case is squarely applicable in this case. The petitioner has been working as a Sweeper. She was paid a sum of Rs. 1,03,415/- and thereafter, it has been taken away by her that too in the face of an interim order passed by this Court. This would certainly cause extreme hardship. Therefore, W.P.(MD)No.2986 of 2015 is allowed and the impugned order is hereby quashed.

7. Since the respondents have managed to persuade the petitioner to pay the said amount, the department is directed to refund the said amount to the petitioner. The said amount shall be paid to the petitioner within a period of eight weeks from today i.e (31.01.2018). Accordingly, W.P.(MD)Nos.18211 and 21045 of 2017 are disposed of as indicated above. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub-Assistant Registrar



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To:

- 1.The District Educational Officer,
Ramnad Distirct.
- 2.The Assistant Elementary Educational Officer,
Elementary Educational Office,
R.S.Mangalam, Ramnad District.
- 3.The Director of School Education,
College Road, Chennai.
- 4.The Joint Director of School Education,
(Employees Section)
College Road, Chennai.
- 5.The Secretary to Government,
School Education Department,
Chennai.

+3ccs to Mr.PT.S.Narendravasan, Advocate, SR.Nos.45581, 45582 and
45583

+One cc to The Special Government Pleader, SR.No.45968

rmi

RL/10C/4P/CVC/SAR4/8/3/2018

W.P. (MD) Nos.18211 of 2014, 2986 of 2015 and 21045 of 2017
and
M.P. (MD) Nos.1 of 2014 and 1 & 3 of 2015