



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.12.2018

CORAM

WEB COPY

THE HONOURABLE MR. JUSTICE G.R.SWAMINATHAN

W.P(MD).Nos.18129 & 18130 of 2018
and W.M.P.(MD).Nos.16032 to 16037, 21659 & 21660 of 2018

Mayilvaganam .. Petitioner in W.P.(MD).No.18129 of 2018

R.Mayaperumal .. Petitioner in W.P.(MD).No.18130 of 2018

Vs.

1.The Government of Tamilnadu
Secretary Labour and Employment Department
St. George Fort, Chennai.

2.The Commissioner,
Labour and Employment Department,
Chennai.

3.The Additional Commissioner
Labour and Employment Department
Tamilnadu Housing Board Complex (1st Floor)
Elis Nagar, Madurai - 13. .. Respondents in both petitions

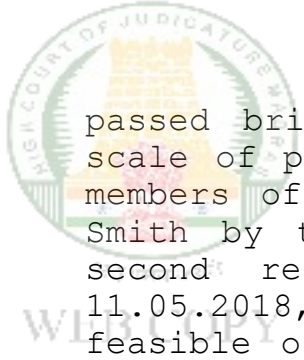
COMMON PRAYER: Writ Petitions filed under Article 226 of Constitution of India for issuance of Writ of Certiorarified Mandamus calling for the records relating to the impugned order of the 2nd Respondent in his proceedings G2/35405/17, dated 11.05.2018 and the consequent selection of the direct recruitment by notification, dated 05.04.2018 of the 3rd respondent and quash the same as illegal arbitrary and devoid of merit and consequently direct the Respondents to appoint the petitioner as Stamping smith in the vacancies notified for the present year with all benefits, back wages, emoluments as applicable to the said post

For Petitioners : Mr.M.Joseph Thatheus Jerome
for Mr.S.Alagusundar

For Respondents : Mr.Aayiram K.Selvakumar
Additional Government Pleader
(in both petitions)

ORDER

The petitioners are working as Sweeper-cum-water carrier in Labour and Employment Department since 2006 without any break. G.O.Ms.No.92 Labour and Employment Department, dated 03.03.2016, was



passed bringing the petitioners and 20 others into Special Time scale of pay. The case of the petitioners is that since they are members of the basic service, they must be appointed as Stamping Smith by transfer. The petitioners made such a request to the second respondent. The second respondent by order, dated 11.05.2018, informed the petitioners that their request was not feasible of compliance. The same is challenged by way this writ petition.

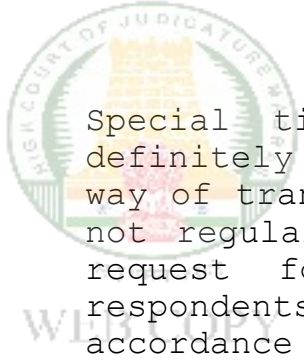
2. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents.

3. The learned counsel for the petitioner took me through the Special rules for Tamilnadu Basic Services and contended that the petitioners are very much eligible to be appointed as Stamping Smith by way of transfer.

4. I am unable to agree with the aforesaid submissions of the petitioners' counsel.

5. This Court went through the contents of G.O.Ms.No.92, dated 03.03.2016, issued by the first respondent, line by line. This Government Order refers to G.O.Ms.No.385 Finance Department, dated 01.10.2010 and G.O.Ms.No.99 School Education, dated 08.06.2011. The Government order only reads that since the petitioners have put number of years of service on daily wages/consolidated basis, they are brought into Special Time Scale of Pay. It does not anywhere confer the status of member of Tamilnadu Basic Services. The Certificate issued by the Employer only indicates that the petitioners were working as Sweeper cum Water Carrier since 01.07.2006 & 01.03.2006 respectively without any break. In other words, the materials placed by the writ petitioners only indicates that the petitioners are doing the job assigned to members of the basic service. Only if the petitioners establish that they are members of Tamilnadu Basic Service, they can claim appointment to the post of Stamping smith by way of transfer. In fact that is what, the counter also says. As stated in the counter affidavit, the petitioners were not regularised as Sweeper cum Water Carrier. Therefore, the order impugned in the writ petition is sustained and the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

6. But then, it cannot mark the end of the road for the petitioners. The petitioners can definitely lay claim for equal pay for equal work. If other persons who are doing the same work are paid higher pay the petitioners can certainly call upon their employer to give the same pay. Likewise, the petitioners can call upon the employer to regularise them in the post of Sweeper cum Water carrier if the posts are available. The employer will not be justified in keeping the posts vacant and at the same time extracting work from the petitioners by merely conferring them



Special time scale of pay. Thereafter, the petitioners can definitely renew their claim for appointment as Stamping smith by way of transfer. The impediment at present is only though they are not regularised as the members of Tamilnadu Basic Service. If a request for regularisation is made by the petitioners, the respondents are directed to dispose of the same on merits and in accordance with law within a period of eight weeks thereafter.

Sd/-
Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar(CS-I)

To

1.The Secretary of Labour and Employment Department,
Government of Tamilnadu,
St. George Fort,
Chennai.

2.The Commissioner,
Labour and Employment Department, Chennai.

3.The Additional Commissioner,
Labour and Employment Department
Tamilnadu Housing Board Complex (1st Floor),
Elis Nagar, Madurai - 13.

+2cc to Mr.P.sivachandran, Advocate in SR.No.99500,99501
+1cc to Special Government Pleader, SR.No.99641

W.P(MD) .Nos.18129 & 18130 of 2018
10.12.2018

TM

SPRSK SAR1 18.12.2018 3P 7C