

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.06.2019

CORUM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MS.JUSTICE P.T.ASHA

Writ Appeal No.1378 of 2019
and
C.M.P.No.9479 of 2019

Tamil Nadu Education Department,
Conservancy Works Welfare Association,
represented by its President,
Mr.G.Murugan Appellant

Vs

1. The State of Tamil Nadu,
represented by its Secretary to Government,
School Education Department,
Fort St. George,
Chennai - 600 009.
2. The State of Tamil Nadu,
represented by its Secretary to Government,
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. Respondents

APPEAL filed under Clause 15 of the Letters Patent to set aside the order passed by this Hon'ble Court dated 04.02.2019 made in W.P.No.334 of 2018.

Prayer in W.P.No.334 of 2018: Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondents to regularise the services of the members of the petitioner, who were appointed pursuant to G.O.Ms.No.47, School Education (R-1) Department, dated 2.3.2012 in the post of conservation of workers (sweepers) and consequently direct the respondents to declare their probation and revise the salary of the

conservation workers (sweepers) appointed in Government High Schools and Government Secondary Grade Schools pursuant to G.O.Ms.No.47, School Education (R-1) Department, dated 2.3.2012 from Special Time scale of pay at Rs.1300-300 Grade pay 300 to Time scale of pay at Rs.4800-10000 Grade pay 1300 on par with the salary of watchmen, who were appointed along with the sweepers under G.O.Ms.No.47, School Education (R-1) Department, dated 2.3.2012.

For Appellant : Mrs.Nalini Chidambaram, S.C.
For Ms.C.Uma

For Respondents : Mr.C.Munusamy, Spl.G.P.(Edn.)

J U D G M E N T

(Judgment of the Court was delivered by P.T.ASHA, J.,)

This Intra-Court appeal is filed challenging the order dated 04.02.2019 in W.P.No.334 of 2018.

2.The appellant which is a registered Welfare Association formed to espouse the cause of Sweepers had filed the Writ Petition referred to above seeking the issue of a Writ of Mandamus to the respondents to regularise the services of the members of the appellant's Association in pursuant to G.O.(Ms). No.47, School Education (R-1) Department, dated 02.03.2012, in the post of conservancy workers (Sweepers) and seeking consequential reliefs.

3.The members of the petitioner Association who were appointed along with the Watchmen were given a lower time scale of pay. They had therefore addressed the respondents to be treated on par with the Watchmen with regard to the time scale of pay. The representations dated 01.11.2017 forwarded by the petitioner Association was rejected by the 1st respondent. They had thereafter addressed two representations to the 1st respondent dated 24.11.2017 and 04.12.2017 reiterating their request for parity of pay along with the Watchmen who were also appointed under G.O.(Ms).No.47, dated 02.03.2012. Since their efforts did not evoke a favourable response the Association had filed W.P.No.334 of 2018 which is the subject matter of this appeal.

4.By order dated 04.02.2019, learned Single Judge of this Court was pleased to dismiss the Writ Petition. The learned Judge had observed as follows:

"13.The Apex Court of India in unambiguous terms held in catena of judgments that regularisation or

permanent absorption can never be granted in respect of the appointments not made in accordance with the Recruitment Rules in force. The irregular and illegal appointments can never be cured. The High Court cannot issue any direction under Article 226 of the Constitution of India for issuing directions to regularise the services of an employee if such an employee was not appointed in accordance with the Recruitment Rules and under the Constitutional Schemes.

14.This apart, the reference made by the learned Senior Counsel regarding the Government Order passed in G.O.Ms.No.47, School Education Department, dated 2.3.2012, the said Government Order had been issued creating certain posts. Even if the members of the petitioner-Association were appointed based on the said Government Order, the appointment was on consolidated pay and on temporary basis. Thus the said Government Order is of no avail to the members of the writ petitioner-Association to claim regularisation or permanent absorption.

15.This apart, creation of posts is an administrative policy. Persons appointed in the said created posts, if temporarily, cannot have any claim at all. In the present case on hand, the members of the writ petitioner-Association were appointed on temporary basis on consolidated pay and the recruitment process has not been followed at all. Such back door appointments can never be regularised. Persons, who were appointed by way of back door entry appointments, must be allowed to go out from the door through which they actually entered into."

5.Challenging the above order, the Association has filed the instant appeal.

6.We are informed that the Director of School Education has issued a proceeding dated 11.04.2019 bearing Na.Ka.No.51860/A5/E1/2015, giving directions to all the Chief Educational Officers to absorb the members of the appellant Association in the post of Sweepers.

7.Since the Government has taken a decision to absorb the services of the Sweepers, nothing further survives for adjudication in the above Writ Appeal. However, considering the fact that the Government has taken the above decision and communicated the same to all the Chief Educational Officers, the Government shall ensure that the orders are complied with as expeditiously as possible and in any event within a period of three months from the date of receipt of a copy of this Judgment.

The Intra-Court appeal is disposed of as indicated above.
No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

sl/mps

To

1. The Secretary to Government,
The State of Tamil Nadu,
School Education Department,
Fort St. George,
Chennai - 600 009.
2. The Secretary to Government,
The State of Tamil Nadu,
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.

+1 cc to M/s.C.Uma, Advocate, S.R.No.46122

+1 cc to the Government Pleader, S.R.No.46905

सत्यमेव जयते

Writ Appeal No.1378 of 2019
and
C.M.P.No.9479 of 2019

PA(CO)
SSM(30/07/2019)
SSM(27/08/2019)

WEB COPY