

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2019

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P.No.29547 of 2019

1.B.Amaravathi
2.M.Ealkkiya
3.C.Anitha Roselin
4.V.Raman
5.G.Vasugai
6.R.Manikandan
7.T.Ramachandran
8.A.Rajkumar
9.P.Palaniayani

... Petitioners

Vs.

1.The Secretary to Government
Home Department,
Fort St George,
Chennai-600 009

2.The Director General of Police,
Chennai-600 004

3.The Inspector General of Police,
Central Zone
Trichy-620 001

4.The Superintendent of Police,
District Police Office,
Thiruvarur.

5.The Superintendent of Police,
District Police Office,
Trichy Rural District.

... Respondents

Petition filed under Article 226 of The Constitution of India praying for issuance of a Writ of Mandamus to direct the first and second respondent herein to re-fix the pay of the petitioners from Rs.1300-3000+GP Rs.300 per month into that of Rs.4800-10000+GP Rs.1300 per month in the light of the order

passed in WP.(MD) No.17633 of 2014 dated 25.01.2018 within a time frame.

For Petitioners .. M/s.G.Bala & Daisy
For Respondents .. Mr.A.N.Thambidurai, Spl GP

ORDER

This writ petition has been filed seeking for issuance of a Mandamus to direct the first and second respondent herein to re-fix the pay of the petitioners from Rs.1300-3000+GP Rs.300 per month into that of Rs.4800-10000+GP Rs.1300 per month in the light of the order passed in WP.(MD) No.17633 of 2014 dated 25.01.2018 within a time frame.

2. According to the petitioners, they had registered their names in the respective District Employment Exchanges and as per Employment Exchange seniority, they were called for interview and certificate verification before 3rd and 5th respondents and thereafter, they were selected in regular vacancies for the post of Sanitary Workers and appointed in the respective vacant places in the Police Department. From the date of their appointment, the petitioners have been working continuously as Sanitary Workers. The grievance of the petitioners is that they were denied regular time scale of pay Rs.4800-10000+Grade Pay of Rs.1300 per month, but they were all along being paid a pay scale of Rs.1300-3000+Grade Pay of Rs.300 per month. Hence, the petitioners have come forward with the present writ petition for the relief as mentioned above.

3. The learned counsel appearing for the petitioners would submit that the petitioners were appointed and posted on regular basis as Sanitary Workers and thereby they are entitled to regular time pay scale of Rs.4800-10000+Grade Pay of Rs.1300 per month, but contrary to the same, the petitioners were being paid lesser pay scale. The learned counsel would draw the attention of this Court to an order dated 21.01.2018, passed by the Madurai Bench of this Court in a writ petition in WP(MD) No.17663 of 2014 filed by similarly placed Scavengers working in School Education Department claiming for fixation of their pay in the regular time scale of pay of Rs.4800-10000+Grade Pay of Rs.1300 per month, this Court has considered the claim of the petitioners therein and held that the petitioners therein are entitled to the regular time scale of pay and directed the respondents therein to issue appropriate orders. Therefore, the learned counsel would implore this Court to direct the second respondent to re-fix the pay of the petitioners in the regular time scale of pay.

4.The issue involved in the present writ petition is no longer res integra since Madurai Bench of this Court has considered the similar issue in WP(MD) No.17663 of 2014 and by order dated 25.01.2018, it has been observed in paragraphs Nos.8 & 9 as under:

"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."

5. In the present case, admittedly the petitioners have been appointed on regular basis as Scavengers but they were not given regular time pay scale of Rs.4800-10000+Grade Pay of Rs.1300 per month while similarly placed Sanitary Workers in other Departments were granted regular pay scale. Therefore, considering the same and as well as in the light of the order passed by the Madurai Bench of this Court, this Court is of the view that the petitioners are entitled for re-fixation of their pay in the regular time scale of pay.

6. Accordingly, the writ petition is disposed of, and the second respondent is directed to pass appropriate orders in regard to refixing the pay of the petitioners in the regular time scale of pay Rs.4800-10000+Grade Pay of Rs.1300 per month, within a period to two weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//
Sub Assistant Registrar

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To

1.The Secretary to Government
Home Department,
Fort St George,
Chennai-600 009

2.The Director General of Police,
Chennai-600 004

3.The Inspector General of Police,
Central Zone
Trichy-620 001

4.The Superintendent of Police,
District Police Office,
Thiruvarur.

5.The Superintendent of Police,
District Police Office,
Trichy Rural District.

+1cc to Government Pleader SR.86890

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MG(CO)
CB(22/11/2019)



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