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For Petitioner : Mr.R.Lakshmanan
(in all WPs)

For Respondents: Mr.Master Ganesh
(in all WPs) Government Advocate

COMMON ORDER

All the above writ petitions involves a common issue and the counsel on either side agreed for final hearing of all the writ petitions and accordingly, this common order is passed in all the writ petitions.

2.The petitioners claim to be Sweeper and Waterman and working on daily wages in the Commercial Tax Department. The petitioners claim to have worked continuously for a long time. According to the petitioners, they are entitled for a scale of pay of 4800-10000+1300GP and that similarly placed persons had already approached this Court and orders have been passed by this Court giving the said benefit. The petitioners herein also claim the same benefits in all these writ petitions.

3.Heard the learned counsel appearing for the petitioners and the learned Government Advocate appearing on behalf of the respondents.

4.It is not necessary for this Court to deal with the issue independently, since the issue has already been dealt by this Court in a writ petition that was filed by an association claiming for similar benefits in W.P.(MD).No.17663 of 2014, dated 25.01.2018. The relevant portions of the order is extracted hereunder.

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



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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.



5. Similar writ petitions were filed before this Court in W.P.Nos.29158 and 29164 of 2019 against the very same respondents and this Court passed a common order on 04.11.2019, following the above said order and gave the relief to the petitioners therein. The petitioners in the above writ petitions are also similarly placed and they are also entitled for the benefits that has been ordered by this Court. It is also brought to the notice of this Court that the order that has been referred supra, became a subject matter of challenge before the Division Bench in W.A.(MD).No.1584 of 2018 and the Division Bench, by an order dated 29.01.2019, dismissed the writ appeal and confirmed the order passed by the learned Single Judge. Thus, the order passed by the learned Single Judge has become final and therefore, the relief that has been granted in the said writ petition will also enure to the benefit of the petitioners.

6. In view of the above discussion, all these writ petitions are allowed and there shall be a direction to the first respondent to pass appropriate Government Order and grant the petitioners the scale of pay of 4800-10000+1300GP from the date of their appointment. The petitioners will be entitled for the benefit of the revision and the placement in the higher pay scale notionally from the date of their appointment with all monetary benefits. The first respondent is directed to issue appropriate orders, within a period of 8 weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

hvk
To

1. The Additional Chief Secretary,
Commercial Tax & Registration (A1)
Department,
Secretariat, Chennai - 9.



2. The Commissioner,
Sale Tax Department,
Elizhaham,
Cheppakkam,
Chennai - 5.

3. The Joint Commissioner,
Commercial Tax,
Dr.Balasundar Road,
Coimbatore - 641018.

+4 ccs to Mr.R.Lakshmanan Advocate sr101929

W.P.Nos.33418, 33420, 33441 & 33442 of 2019

gj (co)
aa21/01/2020