

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 28.10.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 940 OF 2013

S.Sulochana (deceased)

1.Mrs. S.Nirmala

2.Mrs.Deivanai

(P1 and P2 are impleaded as per
this Court order dated 28.10.2020,
vide M.P.NO.2/2013)

... Petitioners

- Vs -

1.The Director,
Tamilnadu Elementary Education,
DPI Compound, College Road,
Chennai -600 006.

2.The Assistant Elementary Educational Officer,
Sholavaram Chennai City Police,
Egmore, Chennai 600 008.

3.The Head master,
Panchayat Union Middle School,
Nallur Village, Ponneri Taluk,
Tiruvallur Dstrict.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of Mandamus, directing the respondents to grant Special time scale of pay (Rs.1300-3000) basic pay of Rs.300/- to the petitioner from the date of her eligibility as per the proceeding of 1st respondent dated 03.11.2010 in Na.Ka.29578/J2/10 and also to pay all the arrears of salary.

For Petitioners : Mr.R.Munusamy

For Respondents : Mr. S.Sureshkumar, G.A. For R1

ORDER

This Writ Petition was filed by the petitioner to direct the respondents to grant Special time scale of pay (Rs.1300-

3000) basic pay of Rs.300/- to the petitioner from the date of her eligibility as per the proceeding of 1st respondent dated 03.11.2010 in Na.Ka.29578/J2/10 and also to pay all the arrears of salary.

2.The case of the petitioners is that they are the legal heirs of the original petitioner/mother, namely S.Sulochana (deceased). The petitioner's mother, a widow, belongs to Scheduled caste community, and studied upto V standard. She was appointed as Assistant at the Panchayat Union Elementary School, Nallur, by the then Commissioner of Sholavaram Panchayat Union, vide proceedings No.Na.Ka.11431/80, dated 31.12.1980 on consolidated pay and thereafter she has been working as School Assistant and discharging her role as sweeper, watchwoman & office assistant respectively without any adverse remarks. At the time of appointment she has been paid Rs.18/- per month and at the time of filing the writ petition, she was getting a sum of Rs.335/- as salary per month. It is the averment of the petitioner that since her initial appointment she has been working in the said school for the past 32 years on consolidated payment. While so, pursuant to the Government order No.28943/N/2010, dated 04.09.2010 and also Government Order 385/Finance(Salary Revision) dated 01.10.2010, the 1st respondent in his proceedings dated 03.11.2010, directed all the officers concerned to furnish the details of persons, who have served more than three years as sweeper on daily wages or consolidated pay in the District Elementary Educational Officer/Assistant Elementary Educational Office/Panchayat Union Schools, Municipality Schools, corporation Schools and Government Aided Schools so as to grant them Special Scale of pay of Rs.1300-3000, basic pay of Rs.300/-. Coming to know the above fact, in order to avail such benefits to be granted by the 1st respondent, the original petitioner made representation on 08.07.2011 to the 2nd respondent. Since no order was passed on the said representation till date, the present petition was filed. Pending the writ petition, the original petitioner passed away, thereafter, in order to avail such benefits, the impleaded petitioners, who are legal heirs of the deceased petitioner are before this Court.

3.Learned counsel appearing for the petitioners submitted that admittedly the original petitioner has entered the service as Sweeper on temporary basis, which is evident from the service register and the endorsement made on 13.03.1998. The original petitioner was appointed by the then Commissioner, Rural Development and Panchayat Union Department by his order dated 31.12.1980 and she joined duty on 01.01.1981. He further submitted that as per the circular dated 03.11.2010 issued by the 1st respondent, the original petitioner is entitled to be considered for grant of time scale of pay. However, her

representation has not been considered and, therefore, this Court may direct the respondents to extend the benefits to the petitioners within a reasonable time as fixed by this Court.

4. Per contra, learned Special Government Pleader appearing for the respondent denied the averments made by the petitioners and referring to the counter affidavit, submitted that the original petitioner was appointed as sweeper in the year 1980, by the proceedings dated 21.12.1980 of then Commissioner, Sholavaram Panchayat Union, Thiruvallur District, purely on temporary basis, to continue year after year. Even at the time of appointment, the petitioner having accepted her service will only be for a temporary period is estopped from claiming regularisation of her service in the cadre post. He further submitted that her case squarely falls within the ambit of back door entry as enunciated by the Hon'ble Apex Court reported in 2006 (4) SCC Pl [State of Karnataka Vs. Uma Devi] and the said decision was also followed by this Court in series of other decisions. In the instant case, the original writ petitioner was appointed by the then Commissioner in the year 1981 and was working in the Department of School Education, to address the administrative requirement and mere opening of service register and payment of salary, which are purely done by the Panchayat Union Commissioner of Sholavaram Panchayat Union will not vest any right on the petitioners to claim regularisation and consequential benefits. Accordingly he prays this Court for dismissal of the petition.

5. This Court heard the submissions advanced by the learned counsel appearing on either side and also perused the materials available on record.

6. The facts in the present case relating to the engagement of the deceased petitioner are not in dispute. Admittedly the original petitioner has temporarily joined as sweeper staff in the respondents school and in the year 1998 service register was also opened wherein the then Commissioner of Rural Development and Panchayat Raj department made endorsement confirming the appointment given on 31.12.1980 and she joined in service on 01.01.1981 and continuously worked from 01.01.1981 to 31.8.2002. This Court also perused the circular dated 03.11.2010, as per which all the officers concerned have been directed to furnish the details of persons, who have served more than three years as sweeper on daily wages or consolidated pay for grant Special Scale of Pay. It is also pertinent to note that even as back as in the year 1980, Government Orders were issued to the effect that persons who were working under the Panchayat Union were merged with the staff of the Government and were made eligible to draw benefits on par with the government staffs. Such being the case, the Government having decided to

confer the benefit of regularisation and consequential benefits on persons like the petitioner, it is not open to the respondents to contend that the appointment is purely for administrative requirement. It is not disputed by the respondents that the petitioner was drawing consolidated pay, but only stress that it was paid by the Commissioner of the Panchayat Union. However, no material whatsoever to substantiate the said contention has been placed before this Court. However, contra to the same, the service register of the petitioner, which has been opened when she joined the service, has been placed before the Court to show that the petitioner was all along in service of the respondent. Therefore, this Court is of the considered view that the petitioners are entitled to the relief sought for.

7. Accordingly, this Court directs respondents 1 and 2 to disburse all the eligible benefits to which the deceased petitioner is entitled to the legal heirs of the deceased, petitioner, who are impleaded as party petitioners to the present petition and release such benefits to the legal heirs of the deceased petitioner within a period of three months from the date of receipt of copy of this order.

8. With the above direction, this Writ petition is disposed of. There shall be no order as to costs.

-sd-

Assistant Registrar (CS)

//True copy//

Sub Assistant Registrar

jrs

To

1. The Director,
Tamilnadu Elementary Education,
DPI Compound, College Road,
Chennai -600 006.
2. The Assistant Elementary Educational Officer,
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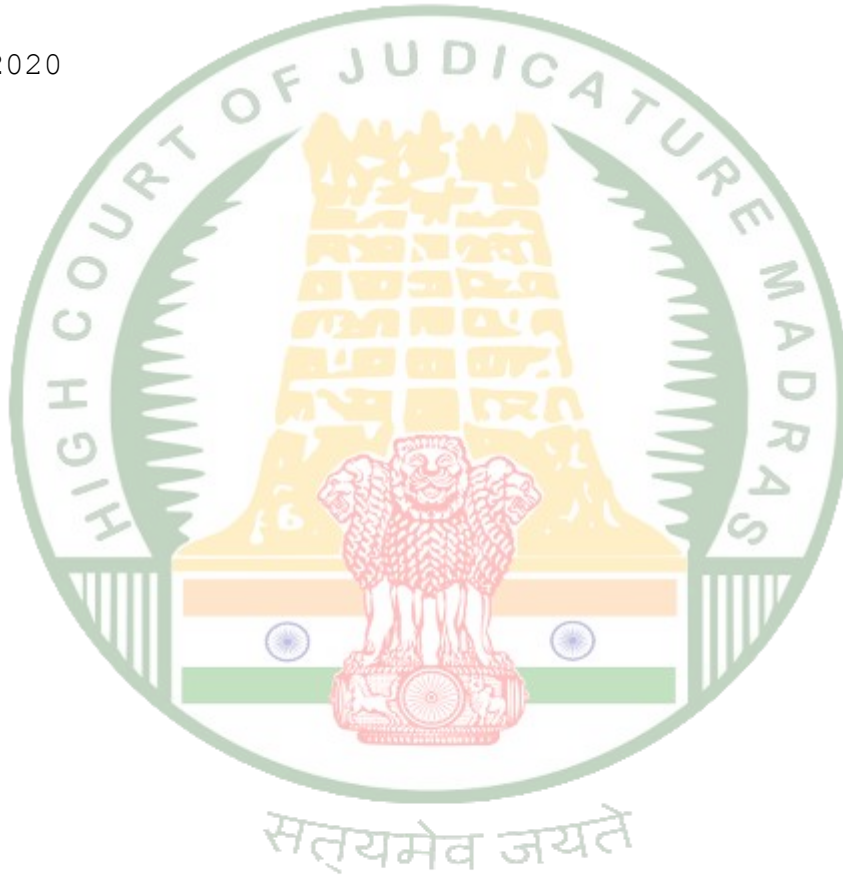
+1 C.C. to Mr.R.Munusamy Advocate SR.NO. 34969

+1 C.C. to The Government Pleader SR.NO. 35039

W.P. NO.940 of 2013

UM (CO)

VS 19.12.2020



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