



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **24.02.2020**

CORAM:

**THE HONOURABLE MR.JUSTICE A.P.SAHI, CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD**

W.A. [MD]No.902 of 2015

and

M.P. [MD]No.2 of 2015

- 1.The Principal Secretary to Government,
School Education Department,
Fort St.George, Chennai - 9.
- 2.The Director of School Education,
DPI Compound, College Road,
Chennai - 6.
- 3.The District Educational Officer,
Paramakudi Educational District,
Paramakudi, Ramanathapuram. : Appellants / Respondents

Vs.

V.Annamuthu : Respondent / Petitioner

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, against the order dated 26.06.2013 passed in W.P(MD)No.7885 of 2013.

Prayer in WP(MD) . 7885/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a WRIT OF MANDAMUS or any other appropriate writ or order or direction in the nature of writ of mandamus directing the respondents to appoint the petitioner in regular time scale either as Sweeper or Scavenger as per the orders issued by the State Government and regularize the petitioners service from the date of her initial appointment and pass such further or other orders.

For Appellants : Mrs.S.Srimathy
Special Government Pleader

For Respondent : Mr.J.Parekh Kumar



JUDGMENT

[Judgment of the Court was delivered by
THE HONOURABLE CHIEF JUSTICE]

We have considered the submissions raised by the learned counsel for the appellants / State and we have also perused the Government Order in G.O.Ms.No.528, Personal and Administrative Reforms (PER.F.) Department, dated 10.10.1988, the production whereof was required by us vide earlier order dated 17.12.2019 in this appeal.

2.The contention of the learned counsel for the State is that in the absence of any regular vacancy, the question of applying the G.O.Ms.No.528 does not arise in the present controversy and therefore, the Judgment of the learned Single Judge extending the benefit of regular appointment to a part time employee is unjustified, for which, reliance is placed by the learned counsel on the Judgment of the Apex Court in the case of **SECRETARY TO GOVERNMENT, SCHOOL EDUCATION DEPARTMENT, CHENNAI v. R.GOVINDASWAMY AND OTHERS**, decided on 21st February, 2014.

3.We have perused the said Judgment and verified that the same proceeded only to consider the impact of Judgments arising out of the other High Courts without discussing the impact of the relevant Government Orders or the provisions applicable to the controversy as presently involved. In our opinion, the Judgement, therefore, would not squarely apply to this case. The Judgment in the case of **STATE OF TAMIL NADU v. A.SINGAMUTHU**, reported in **2017 (4) SCC 113**, also would not be applicable keeping in view the fact that G.O.Ms.No.22 was of the year 2006 dealing with regularisation from the date of appointment or from the date of regularisation.

4. In the present case, the post occupied by the respondent / petitioner is that of a Sweeper / Scavenger in a Government Higher Secondary School on part time basis, where the respondent has been continuing for the past 22 years. This Court, even otherwise, cannot imagine a school having thousands of children to be looked after for health and hygiene with the aid of a part time employee, that too, even a single Sweeper. We, therefore, find that the State Government rightly came up with a scheme for regular appointments and even assuming for the sake of argument that G.O.Ms.No.528, would not consequently apply keeping in view the nature of the vacancy or otherwise even, we are not inclined to interfere with the impugned Judgment on the ground that the post of a Sweeper or Scavenger in a Government school is a *sine qua non* and such post deserves to be made available to an institution keeping in view the nature of the requirement. We, therefore, are not inclined to interfere with the discretion exercised by the learned Single Judge under Article 226 of the Constitution of India, without prejudice to the rights of the



State to contest any other case, on the issue of Law, that may be involved therein.

5.The Writ Appeal is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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3.The District Educational Officer,
Paramakudi Educational Department,
Paramakudi, Ramanathapuram.

+1 CC to M/s.SPL.GP (SR-8134[F] dated 25/02/2020)

+1 CC to M/s.J.PAREKHKUMAR, Advocate (SR-8587[F] dated 26/02/2020)

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