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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.NO.8605 OF 2010

- 1.M.Srikumar
- 2.S.Sasi Kumar
- 3.P.Vijayan
- 4.L.Meenakshi
- 5.A.Murugan
- 6.M.Nagarajan
- 7.G.Sivakumar
- 8.S.Jonny
- 9.M.Padma
- 10.P.Chandrasekaran
- 11.V.Anilkumar
- 12.N.Gowri
- 13.A.Ambika
- 14.R.Balu
- 15.N.Thalavai
- 16.N.Ramachandran
- 17.P.Ramakrishnan
- 18.P.Ramakumari

... Petitioners

Versus

1. State of Tamil Nadu,
Rep. By its Secretary,
Department of Municipal Administration and Water Supply,
Fort St.George, Chennai - 600 009.
2. The Commissioner of Municipal Administration,
Chepauk, Chennai - 600 005.
3. The Commissioner,
Padmanabhapuram Municipality,
Thukalay, Kanyakumari District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue Writ of Certiorarified Mandamus, calling for the records relating to the order Letter No.32760/Na.Pa.3(2)05-2, dated 02.06.2006, on the file of the



first respondent and quash the same and directing the respondents to disburse the arrears of salary to the petitioners as arrived by the third respondent in its resolution dated 08.09.2005.

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For Petitioners : Mr.J.James

For Respondents : Ms.E.Renganayaki,
(for R1 & R2)
Additional Government Pleader.

: No Appearance (R3)

ORDER

The petitioners, eighteen in number, who are working as Sweepers in the Padmanabhapuram Municipality, in Kanyakumari District, have come up with this Writ Petition, challenging the order passed by the first respondent dated 02.06.2006, whereby, the first respondent negated the resolution passed by the municipality on 08.09.2005, allowing the arrears of salary to the petitioners from the date of regularisation and held that the same should be given only from the date on which the regularisation orders were passed, that is, with effect from 13.06.2005.

2.The case of the petitioners is that they were all working as Sweepers on consolidated pay in the third respondent's municipality. While so, the Government framed a scheme for regularisation, vide G.O.(M.S).No.195, Municipal Administration and Water Supply Department, dated 17.08.1999, whereby, the benefit of regularisation was confirmed upon completion of three years of service. Accordingly, their cases were taken up and by order dated 07.06.2005, they were all regularised in their service w.e.f., 01.01.2001 i.e., the date of completion of three years of service, on which date, they were admitted into the time scale of pay. Thereafter, the third respondent/Municipality passed a resolution on 08.09.2005, resolving to grant arrears of pay, from the date of regularisation, and the first respondent by the impugned order refused permission to the third respondent/Municipality and held that the arrears have to be paid only from the date of regularisation orders. According to them the same is illegal and arbitrary and therefore, challenging the order of the first respondent, the present Writ Petition is filed.



3. Heard Mr.J.James, Learned Counsel for the petitioner and Ms.E.Renganayaki, Learned Additional Government Pleader, appearing for respondents No.1 & 2.

4. The Learned Counsel for the petitioner drawing the attention of this Court on the scheme, which is originally framed by G.O.No.71, Municipal Administration and Water Supply Department, dated 05.05.1998 and the subsequent Government Orders referred above, would submit that this scheme was framed by the Government of Tamil Nadu, conferring the benefit of time scale pay, upon completion of three years and once the respondents have chosen to confer the benefit under the scheme, just because, there was an administrative delay in taking up the matter and passing the order, the arrears of pay cannot be denied to them.

5. As a matter of fact, he would rely upon the full bench Judgment of this Court in The Secretary to Government, Municipal Administration and Water Supply Department, Fort St.George, Chennai. Vs. V. Marisamy and others¹, whereby, this Court has held that once the scheme is framed under G.O.No.71, the respondents did not have any discretion to fix any artificial cut-off date and grant regularisation prospectively, it was argued that the benefits should be from the date of completion of three years of service. Once, such benefit was granted and the order of regularisation was issued, the denial of pay and to continue them on a consolidated pay basis for the intermittent period is impermissible and it is violative of principles of "equal pay for equal work", besides being arbitrary and violative under Article 14 of the Constitution of India.

6. Per contra, Ms.E.Renganayaki, Learned Additional Government Pleader, appearing for the first and second respondents would submit that regularisation is not a matter of right. It is a concession conferred by the respondent/Government, only by framing a scheme. While implementing the scheme, the respondents are well within their powers to deny the arrears, taking into account the financial implications and therefore, no exception can be taken to the order of the first respondent and prays for dismissal of the Writ Petition.

7. I have considered the rival submissions made on behalf of the both sides and perused the material records on the case. I am unable to agree with the contention of the learned Additional Government Pleader for the respondents in the teeth of the authoritative pronouncement of the Full Bench this Court

1 REV.Aplc.(MD).No.87 of 2014, batch etc., dated 30.05.2017



referred above, whereunder, the reference was answered categorically by holding that the respective authorities viz., the different Municipalities/different Government authorities, can have no discretion in the matter of date from which the regular pay scale and the regularisation can be conferred, especially, when this scheme contains uniform rules. Therefore, when the petitioners are brought into regular cadre by virtue of regularisation order and when their counter-parts are working as regular Sweepers are getting pay scale in the admissible scale, these 18 petitioners alone were being paid only under the consolidated pay, for the relevant period and the same is discriminatory and the same is directly in conflict with the Judgment of the Hon'ble Supreme Court of India, in State of Punjab and others. Vs. Jagajit Singh and others², whereunder, the Hon'ble Supreme Court has reiterated the principles of "equal pay of equal work" and when the temporary employees are performing the same duties and responsibilities as regular employees. It is fallacious to have artificial parameters to deny the fruits of labour. Therefore, the action of the respondents would be in violation of the mandate of Articles 14 & 16 of the Constitution of India.

8.This apart, the action of the respondents now essentially amounts to regularly appointing the petitioners in a time scale of pay from 2001 but continue to keep them on consolidated pay till 2005. Even in respect of teachers, they were initially engaged on consolidated pay for a period of two years and thereafter conferred time scale of pay, this Court S.Pappa and others Vs. Government of Tamil Nadu and Others², held the same to be illegal. Thus, the impugned order is arbitrary and discriminatory.

9.There is also yet another reason which is to be considered. The petitioners are employees of the third respondent's municipality. Considering that the petitioners being sweepers who are performing a sacrosanct duty and considering their own financial position when the concerned municipality has passed the resolution and is willing to grant the arrears of pay, the first respondent fell in error in interfering with the same.

10.For all the above reasons, the Writ Petition stands allowed. The impugned order is set aside. The petitioners are entitled to the pay admissible from the date of their regularisation and the same shall be paid within three months from the date of receipt of the copy of this order. The

² 2017 1 SCC 148

² (1999) 3 MLJ 347



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petitioners are entitled to the arrears, however, without any interest. There shall be no order as to costs.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
State of Tamil Nadu,
Department of Municipal Administration and Water Supply,
Fort St.George, Chennai - 600 009.
2. The Commissioner of Municipal Administration,
Chepauk, Chennai - 600 005.
3. The Commissioner,
Padmanabhapuram Municipality,
Thukalay, Kanyakumari District.

+1cc to Mr.J.James, Advocate, S.R.No.16977

+1cc to the Government Pleader, S.R.No.17409

W.P.No.8605 of 2010

AJS (CO)

RLP (30/03/2022)