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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.12.2021

PRONOUNCED ON : 07.01.2022

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P. No.8281 of 2021
and
WMP Nos.8820 and 8822 of 2021

Uzhaippor Urimai Iyakkam
rep. By its President
K.Bharathi

...Petitioner

Vs

1. The Commissioner,
Greater Chennai Corporation,
Rippon Building, Chennai - 600 003.
2. The Superintendent Engineer,
Solid Waste Management,
Greater Chennai Corporation,
Rippon Building, Chennai - 600 003.
3. The Secretary to Government,
Municipal Administration & Water Supply Department,
Fort St. George, Chennai - 600 009. ...Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus directing respondents 1 and 2 to pay minimum/scale salary of the permanent conservancy/sanitation workers to the NULM conservancy/sanitation workers working in Zone 7 Unit - 20, Division - 92 of the Greater Chennai Corporation with retrospective effect.

For Petitioner : Mr.S.Kumaraswamy

For Respondents : Ms.M.Dhanisha

for M/s.Karthika Ashok - R1 & R2

Mr.L.S.M.Hasan Fazal

Additional Government Pleader - R3



O R D E R

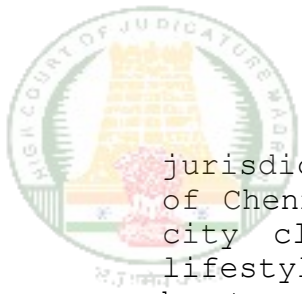
The petitioner is a union which represent the unorganised sector of workers employed throughout the State in various organisations and establishments. The present Writ Petition has been filed espousing the interests of the conservancy/sanitary workers employed by the Greater Chennai Corporation in pursuance of a Scheme formulated by the Central Government, viz., National Urban Livelihood Mission (NULM). The members of the petitioner union have been employed continuously for several years in NULM and work has been extracted from them continuously and without any break or interruption as their work is of perennial nature and not seasonal or temporary.

2. According to the petitioner union that NULM workers have been employed for years together, but unfortunately, they have not been paid the minimum wages that is made applicable to such conservancy/sanitary workers employed on regular basis by the State Government. As on 01.04.2019, the NULM workers have been paid only Rs.391/- per day by the first respondent Corporation, whereas the same conservancy/sanitary worker in the permanent establishment is being paid basic pay of Rs.13,000/- and Dearness Allowance of Rs.4,023/-, totalling 17,023/- per month.

3. As far as the present Writ Petition is concerned, it is relating to Zone - 7 coming under the jurisdiction of the first respondent Corporation. The details of the members of the union have been enclosed in the typed set of documents who have been employed in Zone - 7. According to the union though their request for regularisation of service has been pending with the Government, in the meanwhile their grievance is that they need to be at least paid the minimum wages or they must be paid minimum scale of pay as applicable to the conservancy/sanitary workers, regularly employed by the Greater Chennai Corporation/first respondent herein.

4. According to the petitioner, an attempt was made in February, 2021 to outsource their employment and faced with unjust displacement/disengagement, they have approached this Court and obtained interim orders and their present employment as such has been protected. However, their plea for revision of wages on par with the permanent workers has gone unheeded for several years and they have been paid all along only pittance. According to the petitioner, with meagre rate of payments, they are unable to make both ends meet.

5. The contention on behalf of the petitioners is that the NULM workers are internal part of the sanitary upkeep of the City. The first respondent Corporation is vested with the



jurisdiction and responsibility to maintain and upkeep the city of Chennai and these workers are most essential for keeping the city clean and hygiene for the citizens to lead a healthy lifestyle. While this being the case, these NULM workers cannot be treated like a bonded labour and being paid measly sum as daily wages. The work that has been extracted from them is no different from the work extracted from the permanent employee. In which case, these workers are entitled to be paid on par with the permanent employees, at least appropriately calculated and paid consolidated amount, on the basis of the minimum scale of pay as applicable to the permanent conservancy/sanitary workers employed by the Corporation.

6. In response to the notice, a detailed counter has been filed. The learned counsel appearing for the contesting first respondent Corporation would submit that the NULM workers were employed through private contractors and at no point of time they had been directly recruited by the first respondent either temporarily or on casual basis. They are purely engaged by the contractor of the Corporation. According to the counter affidavit that the scheme in which these NULM workers were employed had come to a close as and when the projects entertained were completed. Therefore, the question of their claiming parity in pay scale would not arise at all. According to the counter affidavit that NULM workers are scheme workers and their wages are paid as per proceedings dated 16.05.2019.

7. The learned counsel for the Corporation would reiterate the above facts as contained in the counter affidavit and submit that under no circumstances these persons can claim themselves to be the workers of the Corporation for claiming any parity in pay scale. In fact, the learned counsel would also draw attention of this Court the order passed by a learned single Judge of this Court in W.P.No.12328 of 2021 dated 21.06.2021, wherein the same union filed a similar case, but has chosen to withdraw the Writ Petition. She would further submit that once the same union has decided to withdraw the Writ Petition, maintaining the second Writ Petition is unsustainable and therefore liable to be dismissed.

8. As far as the above fact and the objection is concerned, it is true on the same issue one other writ petition was filed and unconditionally withdrawn for the reasons known only to the petitioner therein. However, the present Writ Petition appears to have been filed much earlier to the above Writ Petition and therefore the withdrawal of the above Writ Petition cannot said to be having any bearing on the present Writ Petition. In any case, what is being prayed in the present Writ Petition is only payment of minimum wages or to maintain parity of pay as that of the regular workers, who are employed in zone - 7 by the first



respondent Corporation. Such relief cannot be stated to be hit by any principle of estoppel, as the relief flows from the fundamental right guaranteed to all the citizens by the Constitution of India.

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9. It is not denied in the counter affidavit of the continuous employment of NULM workers in Zone - 7. The opposition to the grant of relief is only on the ground that they are Scheme workers and therefore not entitled to regularisation for the reason that they have not been employed directly by the Corporation. In fact, this is not a case of the petitioner union that NULM workers are direct Corporation employees, in this Writ Petition. They are before this Court seeking grant of minimum wages payable to the similarly placed employees, so that they eke out their livelihood modestly and equitably.

10. Mr. Kumaraswamy, learned counsel appearing for the petitioner, in fact, would draw the attention of this Court to a resolution passed by the respondent Corporation dated 27.03.2020, as per which, the entire sanitary operation has been mentioned and the requirement of so many sanitary personnel to be employed for conservancy work. According to the learned counsel, these persons have been employed for all the days in a month without any break.

11. This Court though appreciated the grievance of the NULM workers, that the State Corporation cannot be allowed to exploit their position and extract work from them on a day-to-day basis and deny them the minimum wages for their sustenance. But at the same time, in the Writ Petition nothing is indicated what is the minimum wages that is payable for the category of persons employed in the conservancy work. Moreover, the affidavit does not contain as to how the minimum wages to be calculated with reference to the regular time scale as applicable to the permanent employees of the Corporation, in exact terms.

12. Mr. Kumaraswamy would submit that though it is stated that these workers have been employed through contractors, but in reality, for every group one or two persons have been identified and such identified employees were issued with the cheque towards payment of wages by the Corporation, to be distributed to the other workers, who would form the group. According to the learned counsel, in effect, such arrangement is noticeably sham and nominal intended to avoid any statutory liability on the part of the Corporation towards these workers.

13. This Court while appreciating the submission made on behalf of the petitioner union that engaging workers through contractual arrangement as in many State Undertakings and other



establishment in order to avoid being fastened with statutory liabilities, at the same time, this Court considering the scope of the prayer in this Writ Petition cannot embark into the realm of, whether the employment arrangement of these workers as such is sham, nominal or inevitable?. The limited prayer in the Writ Petition is to direct respondents 1 and 2 to pay minimum wage/scale of pay on par with the permanent conservancy/sanitary workers who are employed in Zone - 7, Unit - 20, Division - 92 of the Greater Chennai Corporation with retrospective effect.

14. In fact, in the affidavit, it has not been clearly stated as to when/since these NULM workers have been employed and what is the current wages being paid to them. In any case, the grievance of the NULM workers cannot be altogether ignored merely because certain facts have not been stated in the affidavit. This is for the reason that when the employees have been employed (for conservancy and sanitation work) for the upkeep and the civic maintenance and burgeoning large city by the Corporation in the welfare and the interest of the citizenry, the Corporation should at least ensure that these NULM workers are treated fairly, reasonably and equitably. The Corporation cannot take refuge behind the contention that the workers are scheme and contractual workers and therefore are entitled to be treated on par with regular employees insofar as wages payable to them. The statement of the Corporation that they are scheme workers may hold good with reference to their claim for regularisation, but not for the present claim for equitable wages.

15. Be that as it may, this Court is unable to come up with any definite opinion as to what specific direction to be issued in this case despite the fact that the Court is inclined to grant some relief to these workers who have been struggling to eke out a decent livelihood, notwithstanding their continuous employment by the Corporation.

16. The Government/State Corporation which is a model employer is expected to protect the most weaker sections while employing them and it cannot exploit their labour. When the Corporation is involved in engaging contract or scheme workers, in whatever/howsoever it is nomenclatured, such workers cannot be meted out step motherly treatment in the matter of payment of wages to them. As the father of the Nation, Mahatma Gandhi said that 'a nation's greatness must be measured by how it treats its weakest members'. The State Corporation is duty bound to address the legitimate grievances of the workers with all earnestness and empathy in regard to their entitlement of wages and conferment of minimum monetary benefits on them. It cannot throw up its hands contending they form a different class of workers and it has no responsibility at all to heed to their



cry. Such stereotype, callous stand of the Corporation is opposed to fair play, good conscience and justice. The State and its Corporations are constitutionally bound to adopt fair method and means, to treat its last grade servants and must ensure that within the available resources, those workers are to be adequately compensated. The Corporation ought not to lose sight of the fact that these workers are integral and essential part of the maintenance of the City. Their day-to-day invaluable contribution for the upkeep of the city is indispensable for every citizen of this burgeoning city to lead a robust lifestyle in a wholesome environment.

17. For all the above said reason, the Writ Petition is disposed of with a direction to the respondents to formulate a comprehensive Scheme for bringing the NULM workers employed continuously for considerable length of time without any break in a regular scale of pay or wages which is rationale, reasonable and equitable. While formulating the Scheme, the respondents shall also take into account the work that is being extracted from these workers and also the time scale of pay that is being paid to the regular employees for doing the same work.

18. The respondents are directed to pass appropriate orders formulating a viable scheme within a period of twelve (12) weeks from the date of receipt of a copy of this order.

19. The respondents shall ensure that the inconsiderate and frugal wages paid to them as on date, is revised suitably towards their alleviation.

20. In the interregnum, the respondents are directed to pay the minimum wages fixed by the Government in respect of conservancy/sanitary workers and on such fixation, continue to pay to the NULM workers who are members of the petitioner union. No costs. Connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

True Copy//

Sub Assistant Registrar

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To

1. The Commissioner,
Greater Chennai Corporation,
Rippon Building, Chennai - 600 003.
2. The Superintendent Engineer,
Solid Waste Management,
Greater Chennai Corporation,
Rippon Building, Chennai - 600 003.
3. The Secretary to Government,
Municipal Administration & Water Supply Department,
Fort St. George, Chennai - 600 009.

+2ccs to M/s.Karthika Ashok, Advocate, S.R.No.1351,1508

+1cc to Mr.K.Suresh, Advocate, S.R.No.1418

+1cc to the Government Pleader, S.R.No.2006

W.P. No.8281 of 2021
and
WMP Nos.8820 and 8822 of 2021

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