



W.P.No.3834 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.3834 of 2018

1.R.Sanjeevi
2.M.Sivakumar
3.R.Sivakumar
4.D.Latha
5.J.Vasudevan
6.E.Kumutha
7.A.Radha
8.N.Sampath
9.M.Ganapathy
10.A.Narasimman

.... Petitioner

-Vs-

1.The Secretary to Government
School Education (R1) Department
Secretariat, Chennai 600 009.

2.The Director of School Education
College Road, Chennai 600 006.

3.The District Educational Officer
Vellore District, Vellore.

.... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the proceedings in Letter No.6128/P.K.4(1)/2017 dated 21.11.2017 on the file of the 1st respondent and quash the same as illegal, incompetent and ultra vires and consequently direct the respondents to regularize the service of



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the petitioners with effect from the date of their initial appointment and fix the regular scale of pay as fixed for the post Watchman, Night Watchman, Sweeper, Office Assistant and other post under the Tamil Nadu Basic Service Rules.

For Petitioner : Mr.R.Jaya Prakash

For Respondents : Mr.J.C.Durai Raj
Additional Government Pleader

ORDER

The prayer sought for herein is for a Writ of Certiorarified Mandamus to call for the records pertaining to the proceedings in Letter No.6128/P.K.4(1)/2017 dated 21.11.2017 on the file of the 1st respondent and quash the same as illegal, incompetent and ultra vires and consequently direct the respondents to regularize the service of the petitioners with effect from the date of their initial appointment and fix the regular scale of pay as fixed for the post Watchman, Night Watchman, Sweeper, Office Assistant and other post under the Tamil Nadu Basic Service Rules.

2. The State Government issued G.O.Ms.No.47, School Education Department dated 02.03.2012 dated 02.03.2012 under which 5000 posts of sanitary workers were created with a special time scale of pay for appointment in various Government Panchayat Union Schools in the School Education Department of the State of Tamil Nadu.



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3. Pursuant to the said Government Order, the petitioners herein were appointed on temporary basis ie., Rule 10(a)(1) basis either on 23.11.2012 or on 01.12.2012 as the case may be. The case of the petitioners is that, they have been continuously working from that date and their services have not been regularized and their main grievance is that, the pay fixed and paid to them ie., Rs.1300-3000+300 Grade Pay as a special time scale of pay is not equal to the time scale of pay being paid to the other scavengers who are working in the same department or in other departments, as their pay is Rs.4800-10000+1300 Grade Pay.

4. In order to get similar pay for the similar work in the same Government Departments, the petitioners had given representations to the respondent Department on 10.06.2017. However, the said representation having been considered is now rejected through the impugned order of the first respondent dated 21.11.2017.

5. Assailing the said order passed by the first respondent dated 21.11.2017, Mr.R.Jayaprakash, learned counsel for the petitioners would contend that the issue raised in this writ petition has already been settled. In other words, it is no more res integra.



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6. In support of his contention, the learned counsel for the petitioners would submit that, similarly placed persons like the petitioners, on behalf of their association called School Education Department Scavengers Welfare Association at Pudukkottai District had approached the Madurai Bench of this Court by filing a writ petition in W.P.(MD) No.17663 of 2014, where, inter alia their prayer was to fix the time scale of pay on par with other similarly placed persons working in various Departments including Education Department and in this regard, Clause 2(i) of G.O.Ms.No.47, School Education Department dated 02.03.2012 was put to challenge.

7. A learned Judge of this Court, having considered the said plea raised in the said writ petition, has passed the following order.

“ 7. Heard the submissions of the learned counsel on either side.

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



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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 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



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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.”

8. As against the said order passed by the Writ Court, the State Government preferred intra Court appeal in W.A.(MD) No.1584 of 2018. The said writ appeal having been considered was rejected by the Division Bench of the Madurai Bench of this Court, by order dated 29.01.2019, where the Division Bench has held as follows.

“ 4. The issue raised in this Writ Petition is no longer res integra, in view of the law laid down by the Hon'ble Supreme Court in State of Punjab and others vs. Jagjit Singh and Others [2017(1) SCC 148] and Sabha Shanker Dube vs. Divisional Forest Officer and others [2018(14) Scale 765]. 5. There is no dispute that the Members of the Association are working as Scavengers. The Government sanctioned time scale of pay to the



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Scavengers appointed to work in various Government departments and in the High Court. Those Scavengers are receiving a salary of Rs.18,843/-. However, the members of the Association were given the salary in the scale of pay of Rs.1,300-3,000 with the Grade Pay of Rs.300. The Scavengers working in the other departments including the Education Department were given the pay scale of Rs.4,800-10,000 + Grade Pay of Rs.1,300. The pay structure is per se discriminatory. It violates the principle of Equal Pay for Equal Work. The learned Single Judge was, therefore, justified in quashing the particular clause and directing the appellant to sanction the time scale of pay to the Scavengers, taking into account the salary of similarly placed scavengers working under the State. We do not find any error or illegality in the said order warranting interference.

6. In the upshot, we dismiss the intra-Court appeal. No costs. Consequently, the connected miscellaneous petition is closed.

9. The learned counsel for the petitioners would also contend that, pursuant to these orders passed by this Court, the non compliance of the orders was brought to the notice of this Court by a Contempt Petition (MD) No.1227 of 2018 and pursuant to which, during the pendency of the contempt petition, the School Education Department has complied with the order and therefore the contempt petition was closed by order dated 15.03.2019.



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10. Relying upon these orders passed by this Court, the learned counsel for the petitioners would contend that, since already the issue has been decided or settled and it has become final and the same since has been implemented in respect of those people who are similarly placed like the petitioners, the present order dated 21.11.2017 denying such benefit of equal pay ie., equal pay to the petitioners is unjust, unlawful and therefore he seeks the indulgence of this Court.

11. Heard Mr.J.C.Durai Raj, learned Government Counsel would submit that, 5000 new posts were created only to meet the contingency and therefore, at the time of creation of the posts itself it was made clear that it is the policy decision of the Government to fix a special time scale of pay which will not be equal to the regular time scale of pay under which similar others who are already appointed and working.

12. When that being so, after having been appointed and accepted the service conditions including scale of pay fixed for them, these petitioners cannot subsequently turn around and say that the special time scale of pay is not equal to the scale of pay that is being fixed and paid to other people who are similarly placed.



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13. The special arrangement made in respect of the specially created posts would carry only special time scale of pay. Therefore, the reason cited by the Government in rejecting the plea of the petitioners by the impugned order dated 21.11.2017 is strictly in consonance with G.O.Ms.No.47 dated 02.03.2012 and hence the learned Additional Government Pleader seeks dismissal of this writ petition.

14. I have heard the learned counsel appearing for both sides and have perused the materials placed on record.

15. As has been rightly pointed out by the learned counsel for the petitioners, the issue raised in this writ petition is no more res integra.

16. In fact, the offending clause available in G.O.Ms.No.47 ie., Clause 2(i) of G.O.Ms.No.47, School Education Department dated 02.03.2012 having been challenged before this Court, was struck down by the orders of this Court dated 25.01.2018 as stated supra, which was confirmed by the Division Bench order by order dated 29.01.2019. Having accepted the legal position, the order passed by this Court was complied with by the respondent Education Department. Therefore, the present plea raised by the learned Additional Government



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Pleader that the petitioners cannot seek for equal time scale of pay instead of the special time scale of pay which is lesser than the regular time scale of pay cannot be countenanced.

17. Insofar as the petitioners are concerned, they are qualified to hold the post of scavengers and they have been appointed by getting sponsorship of their names from the employment exchange and from the date of appointment, they have been continuously working. Therefore, since the posts are already created on substantive vacancies / posts by issuance of the said G.O.Ms.No.47, they shall be entitled to get declaration of probation if they have already successfully completed the two years period from their date of appointment. They shall also be entitled to get regularization and for equal pay as has been provided in all the other cases.

18. Accordingly, this Court is inclined to dispose of this writ petition with the following order.

- That the impugned order is set aside and as a sequel, there shall be a direction to the respondents to consider the request of the petitioner for regularizing their services by declaring the probation if they have successfully completed two years of service from the date of appointment.



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- As a further consequential action, the respondents shall calculate the regular time scale of pay which has been paid to other similarly placed persons, to the petitioners also and such payment shall be made from the date of the order ie., 25.01.2018 made in W.P.(Md) No.17663 of 2014, as on that date the offending clause 2(i) of G.O.Ms.No.47 has been declared to be unconstitutional and from that date the petitioners are entitled to get equal time scale of pay.
- Therefore, calculating such arrears, the difference of pay shall be paid and they shall be continued to be paid the regular time scale of pay on par with others.
- The needful as indicated above shall be undertaken by the respondents within a period of eight weeks from the date of receipt of a copy of this order.

19. With the above directions, this writ petition is disposed of. No costs.

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Index : Yes/No
Internet : Yes/No
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To

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- 1.The Secretary to Government
School Education (R1) Department
Secretariat, Chennai 600 009.
- 2.The Director of School Education
College Road, Chennai 600 006.
- 3.The District Educational Officer
Vellore District, Vellore.



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R. SURESH KUMAR, J.

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