



W.P(MD)Nos.22370 and 22392 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.11.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)Nos.22370 and 22392 of 2021

and

W.M.P.(MD)Nos.18931 and 18943 of 2021

W.P.(MD)No.22370 of 2021:-

- 1.P.Kavitha
- 2.M.Alagar
- 3.B.Amirtha Selvam
- 4.V.Ganesan
- 5.O.Lakshmanan
- 6.M.Manikandan
- 7.A.Pandiyammal
- 8.P.Sakthi
- 9.P.Solaiammal
- 10.M.Sundaralingam
- 11.S.Murugan

... Petitioners

Vs.

- 1.The State of Tamil Nadu,
Rep. by its Principal Secretary to Secretary,
Backward Class, Most Backward Class
Minorities Welfare Department,
Secretariat, Chennai.
- 2.The Commissioner/Director,
Most Backward & De-notified Communities Welfare,



W.P.(MD)Nos.22370 and 22392 of 2021

Chennai 600 005.

3. The Joint Director,
Kallar Reclamations,
Olad Ramanathapuram Collectorate Campus,
Madurai, Madurai District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 1st respondent in his proceedings in Letter No.953928/P.Na.3(1)/2021-8 dated 23.11.2021 and quash the same as illegal and consequently to direct the respondents to grant regular time scale of pay in the cadre of Scavenger appointed in terms of G.O.Ms.No.123 Backward Class, Most Backward Class Minorities Welfare Department dated 22.10.2010 on par with the existing Scavengers who are receiving regular time scale of pay i.e., Rs.4800-10000+G.P. Rs.1300/- in the light of order made in W.P.(MD) No.17663 of 2014 dated 25.01.2018 confirmed in W.A.(MD) No.1584 of 2018 dated 29.01.2019 and in the light of G.O.Ms.No.50 School Education Department dated 08.03.2019 within the period that may be stipulated by this Court.

For Petitioners : Mr.C.Venkatesh Kumar,
For M/s.Ajmal Associates.

For Respondents : Mr.J.K.Jayaseelan,
Government Advocate.

W.P.(MD)No.22392 of 2021:-

M.Selvakumar

... Petitioner

Vs.



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Madurai, Madurai District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 1st respondent in his proceedings in Letter No.953928/P.Na.3(1)/2019-8 dated 05.03.2021 and quash the same as illegal and consequently to direct the respondents to grant regular time scale of pay in the cadre of Scavenger appointed in terms of G.O.Ms.No.123 Backward Class, Most Backward Class Minorities Welfare Department dated 22.10.2010 on par with the existing Scavengers who are receiving regular time scale of pay i.e., Rs.4800-10000+G.P. Rs.1300/- in the light of order made in W.P.(MD) No.17663 of 2014 dated 25.01.2018 confirmed in W.A.(MD) No.1584 of 2018 dated 29.01.2019 and in the light of G.O.Ms.No.50 School Education Department dated 08.03.2019 within the period that may be stipulated by this Court.



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For Petitioner : Mr.C.Venkatesh Kumar,
For M/s.Ajmal Associates.

For Respondents : Mr.J.K.Jayaseelan,
Government Advocate.

COMMON ORDER

Heard the learned counsel on either side.

2.The writ petitioners are working as Scavengers in various Kallar Reclamation Schools. It is not in dispute that their services have already been regularized. However, they are only getting special time scale of pay. They want to be placed in regular time scale pay. Their request was rejected by the impugned order. Questioning the same, these writ petitions have been filed.

3.The learned counsel for the petitioners reiterated all the contentions set out in the affidavits filed in support of the writ petitions and called upon this Court to set aside the impugned order and grant relief as prayed for.

4.The learned Government Advocate for the respondents submitted that the impugned order does not call for any interference. His core contention is that there is no provision for payment of regular time scale of pay for the post



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of Scavengers under the Special Rules governing those working in Kallar Reclamation Schools. He pressed for dismissal of the writ petition.

5.I carefully considered the rival contentions and went through the materials on record. In fact, Scavengers working in the education department sought similar relief and filed W.P.(MD)No.17663 of 2014. The said writ petition was allowed by me on 25.01.2018 in the following terms:-

“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 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



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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 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.”

6.The department filed W.A.(MD)No.1584 of 2018. The writ appeal was dismissed on 29.01.2019 in the following terms:-

“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



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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 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.”

The Hon'ble Supreme Court also declined to interfere. The reasons set out in the aforesaid order are applicable to the present case also. It is relevant to note that the said order was also implemented by issuing G.O.(Ms) No.50, School Education Department, dated 08.03.2019.



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7.The petitioners herein cannot be treated otherwise. They are also doing the very same work. Merely because they are serving in Kallar Reclamation Schools which is not directly under the education department, a different yardstick cannot be applied.

8.Adopting the very same approach, the impugned order is set aside the writ petitions are allowed. The petitioners will be placed in regular time scale of pay from the date when they were regularized. This will be only for notional purpose. The monetary benefits will be given effect to from the date when the impugned order came to be passed. No costs. Consequently, connected miscellaneous petitions are closed.

17.11.2022

Index : Yes / No
Internet : Yes/ No
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To:-

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Backward Class, Most Backward Class
Minorities Welfare Department,
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2. The Commissioner/Director,
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G.R.SWAMINATHAN, J.

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