



W.A.No.1000 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

W.A.No.1000 of 2018

and

C.M.P.No.8496 of 2018

1.The Secretary to Government of Tamil Nadu,
Municipal Administration and Water Supply Department,
Fort St. George, Chennai – 600 009.

2.The Commissioner of Municipal Administration,
Chepauk, Chennai – 5.

3.The Commissioner,
Coimbatore Corporation,
Coimbatore.

...Appellants

Vs.

1.K.Jayabal

2.S.Marimuthu

3.C.Selvakumar

4.K.Murugavel

5.A.Sundararajan

6.A.Ramarajan

7.M.Maharajan

...Respondents



W.A.No.1000 of 2018

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 31.07.2017 made in W.P.No.28272 of 2014.

For Appellants : Mr.L.S.M.Hasan Fizal,
Additional Government Pleader
For Respondents : Mr.V.Vijay Shankar for R1 to R6
R7 – No appearance

J U D G M E N T

(Judgment was made by **R.SUBRAMANIAN, J.**)

The Government is on appeal aggrieved by the direction made by the writ Court to regularize the petitioners, before it, as drivers from the date on which they were regularized as sanitary workers.

2. At the out set, we must point out that this is another case of exploitation by the state. Though the petitioners were appointed as sanitary workers they were made to do the work of drivers, which admittedly has a higher pay scale. When these persons sought for appointment as drivers, their lack of qualification was taken as a defence, since the relevant Recruitment



W.A.No.1000 of 2018

Rules provided for X Standard pass as mandatory educational qualification for the post of driver.

3. However, subsequently the Government issued a Government Order in G.O.Ms.No.140, Municipal Administration and Water Supply Department dated 27.05.1997 relaxing the qualification and thereby making persons who have passed VIII Standard and possessing a driving license as eligible for appointment as drivers. Relying upon the said Government Order, the petitioners moved this Court in W.P.No.31604 of 2007 seeking a mandamus directing the employer to regularize the petitioners' service as drivers. This Court passed the following order in the said writ petition on 01.10.2007:

'The petitioners have come forward with the present Writ Petition for Mandamus, directing the respondents to regularise the petitioners service as drivers from the date of first appointment.'

2. Considering the facts and circumstance of the case, the petitioners are directed to give a representation to the respondents enlisting their



grievances, within a period of one week from this date and on receipt of the same, the respondents are directed to consider the same on merits and in accordance with law, within a period of six weeks thereafter.'

4. Pursuant to the said order, the Commissioner, Coimbatore Municipal Corporation by his letter dated 22.02.2008 required the petitioners and others, totally 13 in number, to apply for the post of drivers with evidence of educational qualification viz., VIII Standard pass and possession of a driving license. A reference was made to G.O.Ms.No.140, Municipal Administration and Water Supply Department dated 27.05.1997 in the said proceedings dated 22.02.2008.

5. It is the case of the petitioners that they had applied for and yet their case was not considered. The defence set up by the Government was that though the Government Order provided for relaxation of educational qualification, the same was not made part of Service Rules and therefore, the petitioners cannot claim the benefit of the Government Order.



W.A.No.1000 of 2018

6. The writ Court taking into account the fact that, in similar cases, the Government had relaxed the qualification and had regularised the services of sanitary workers as drivers, over ruled the objections and allowed the writ petition directing the services of the respondents 1 to 7 to be regularized as drivers from the date on which their services were regularized as sanitary workers.

7. Mr.L.S.M.Hasan Fizal, learned Additional Government Pleader appearing for the appellants would reiterate the same submission and also contend that these petitioners having only passed in VIII Standard are not qualified.

8. Contending contra Mr.V.Vijay Shankar, learned counsel appearing for the respondents would submit that in the very same Coimbatore Municipal Corporation, relaxation in educational qualification has been adopted and about 10 sanitary workers who were working as drivers were regularized pursuant to the order of this Court in in W.P.No.19317 of 1998 dated 20.07.2008. It was also pointed out that relaxation given to one



W.A.No.1000 of 2018

Gurunathan who was working as a sanitary worker in Municipal Administration and Water Supply Department was cited as a precedent by this Court while disposing of W.P.No.19317 of 1998.

9. The appellants being the state is bound to adopt a uniform practice. It cannot pick and choose employees and appeal against certain orders, while regularizing the services of others in compliance with the orders of the writ Court. It is not shown that the order in W.P.No.19317 of 1998 dated 30.07.2008 has been challenged. It is conceded that the same has been complied with.

10. Therefore, we do not see any reason to deny the respondents 1 to 7 of the same treatment. When it is admitted that these respondents 1 to 7 have been performing the duties of the drivers right from day one, treating them as sanitary workers would amount to exploitation as already pointed out, more so, when the scale of pay of drivers is higher than that of the sanitary workers.



W.A.No.1000 of 2018

11. We have been coming across incidents, on a daily basis, where the Government is found guilty of exploiting its own citizens. This practice has to stop. The persons who are in-charge of recruitment and administration must realise that the Government should act as the model employer. At the least, the Government is expected to act fairly. When there are several statutes which protect the workers in private establishments, they are made inapplicable to the Government as the State is expected to desist from adopting unfair labour practice. Such exemptions were implanted in the statutes with a hope that the Government will not indulge in exploitation. But the experience has been otherwise. We therefore have no hesitation in confirming the order of the writ Court.

12. In fine, the writ appeal is **dismissed**. The order of the writ Court is confirmed. The respondents shall comply with the orders of the writ Court within a period of two months from today. No costs. Consequently, the connected miscellaneous petition is closed.



W.A.No.1000 of 2018

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13. Post for compliance on 03.04.2023.

(R.S.M., J.) (S.S.K., J.)
31.01.2023

dsa

Index :Yes

Internet :Yes

Neutral Citation :Yes

Speaking order



W.A.No.1000 of 2018

To

WEB COPY

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W.A.No.1000 of 2018

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