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W.P.No.19069 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2023

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. No.19069 of 2020
and W.M.P.No.23641 of 2020

1. Saroja
2. R.Padmavathy

...

Petitioners

/vs/

1. The State of Tamil Nadu
Rep. by its Secretary,
School Education Department,
Fort St. George,
Chennai – 600 009.

2. The Director of School Education,
DPI Campus,
Chennai – 600 006.

3. Joint Director,
School Education (Personnel)
DPI Campus,
Chennai – 600 006.

4. District Educational Officer,
Arani.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to
issue a Writ of Certiorarified Mandamus calling for the records of the



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fourth respondent herein in Proceedings No.Na.Ka.2640/Aa1/2019 dated 24.09.2019 and quash the same and consequently direct the respondents to extend the benefit of G.O.Ms.No.50 dated 08.03.2019 by granting the petitioners the Regular Time Scale of Pay 4800-10,000 +1300 with notional benefits from 15.12.2016 and with monetary benefits from the date of filing of the writ petition.

For Petitioner	...	Mr.Dakshayani Reddy Senior Counsel
For Respondents	...	Mr. S.Silambanan Additional Advocate General assisted by Mr.P.Sanjai Gandhi Government Advocate

ORDER

This Writ Petition has been filed to call for the records of the fourth respondent in Proceedings No.Na.Ka.2640/Aa1/2019 dated 24.09.2019 and quash the same and consequently direct the respondents to extend the benefit of G.O.Ms.No.50 dated 08.03.2019 by granting the petitioners the Regular Time Scale of Pay 4800-10,000 +1300 with notional benefits from 15.12.2016 and with monetary benefits from the date of filing of the writ petition.



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2. The petitioners are appointed to the post of Sweepers on consolidated pay in the year 2002 and they have made a representation for granting regular time scale of pay and the same was rejected by the impugned proceedings.

3. Heard Ms.Dakshayani Reddy, learned Senior Counsel for the petitioners and Mr. S.Silambanan, the learned Additional Advocate General for the respondents.

4. Ms.Dakshayani Reddy, the learned Senior Counsel for the petitioners submitted that in order to bring the persons who were working on consolidated pay under special time scale of pay, the Government has issued an Order vide G.O.Ms.385, Finance Department dated 01.10.2010; in the said Government order, it is mentioned that only those who are working on a full time basis will be entitled to get the special time scale of pay; the petitioners who were appointed on part time basis, were actually working as full time employees; similarly placed persons have filed a writ petition in W.P.No.18030 of 2015 for including them to avail the benefits of



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G.O.Ms.No.385 dated 01.10.2010 and the said purpose was achieved by issuance of subsequent Government Order G.O.Ms.457, School Education Department dated 15.12.2016; the petitioners were appointed in the newly sanctioned post as per G.O.Ms.457, School Education Department dated 15.12.2016.

4.1 Some other individuals who have been appointed similar to the petitioners on consolidated pay basis, have filed a writ petition in W.P.(MD)No.17663/2015 by claiming regular time scale of pay by placing reliance on G.O.Ms.No.47 School Education Department, dated 02.03.2012, the Court found that G.O.Ms.No.47 School Education Department, dated 02.03.2012 is discriminatory and a direction was given to place the Scavengers who were appointed as per G.O.Ms.No.47 School Education Department, dated 02.03.2012 on par with the other Scavengers working in Education Department and fix their time scale of pay on par with them; the said order was confirmed in the Writ Appeal filed in W.A.(MD)No.1584/2018 and the regular time scale of pay of Rs.4800-10000+ Grade pay of Rs.1300/- is given to the Sweepers in the Education



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Department; however, the petitioners are getting the time scale of Rs.1300-3000+ Grade pay of Rs.300/-; the Government accepted to extend the benefits to the individuals like the petitioners and issued G.O.Ms.No.50 School Education Department, dated 08.03.2019; the petitioners requested to implement and extend the benefits of G.O.Ms.50 School Education Department, dated 08.03.2019; however the said request was rejected through impugned order dated 24.09.2019 in proceedings Na.Ka.2640/Aa1/2019; challenging the same, the petitioners have filed this writ petition.

5. Mr.S.Silambanan, the learned Additional Advocate General submitted that the petitioners are only part time employees and the benefits conferred under G.O.Ms.50 School Education Department, dated 08.03.2019 is an one time benefit; the petitioners cannot be considered as persons covered under the order made in W.P.(MD)No.17663/2014 which quashed Clause 2 (i) & (ii) of G.O.Ms.No.47, School Education Department, dated 02.03.2012; the impugned order has been passed by taking into consideration of the above facts; the Government Order in



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G.O.Ms.457, School Education Department dated 15.12.2016, conferring special time scale of pay is only a concession; since the petitioners were not appointed by following the employment rules they have been treated as a part time Sweeper only; the individuals who are covered by virtue of the order passed in W.P.No.17663 of 2014 are full time Sweepers; hence the impugned proceedings is valid in law and the writ petition should be dismissed.

6. The petitioners did not claim that they were appointed as full time employees. The petitioners were appointed on 21.03.2002 as part time Sweepers and they were given with fixed monthly wages of Rs.120/- per month. However the plight of the petitioners were also considered subsequently as they have filed a Writ Petition in W.P.No.18030/2015. In pursuant to the order dated 24.06.2015 made in W.P.No.18030/2015, the Government has issued subsequent G.O.Ms.457, School Education Department dated 15.12.2016. In the said Government Order, the petitioners were allowed to get the special time scale of pay of Rs.1300-3000+Rs.300/- Grade pay and for their benefit two posts were sanctioned



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on the basis of special time scale of pay. Subsequently, the District Educational Officer, Cheyyar have issued a proceedings on 24.01.2017 for fixation of special scale of pay of Rs.1300-3000+ Grade pay of Rs.300/- to the petitioners.

7. According to the learned Additional Advocate General the above benefit has been extended to the petitioners by giving special concessions and hence they cannot come within the ambit of other employees who are benefited by the orders dated 25.01.2018 made in W.P.(MD) No.17663/2014. However the learned counsel for the petitioner claimed that the petitioners in W.P.(MD)No.17663/2014 would represent the present petitioners also and hence the order dated 25.01.2018 is applicable to these petitioners as well.

8. The Writ Petition in W.P.(MD)No.17663/2014 has been filed challenging Clause 2(i) of G.O.Ms.No.47 School Education Department dated 02.03.2012. It is needless to state that during the relevant point of time when W.P.(MD)No.17663/2014 was filed, the petitioners were not



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getting special time scale of pay because the petitioners have been absorbed under the special time scale of pay only with effect from 23.06.2016 as mentioned in G.O.Ms.No.457 dated 05.12.2016. The petitioners have filed the Writ Petition in W.P.No.18030/2015 and obtained a direction to consider them for regularization. Even in the said direction the Court has insisted the Government to take into consideration of the G.O.Ms.385, Finance Department dated 01.10.2010 and G.O.653 dated 07.08.2009. The said two Government Orders are in respect of fixing special scale of pay and not regular time scale.

9. The other Sweepers were covered under the special time scale of pay and two of these petitioners alone were omitted to be included, the Government has passed a subsequent Government Order in G.O.Ms.457 dated 15.12.2016 for including them under the same time scale of pay.

10. Even though the benefit of including the petitioners under the special time scale of pay was given effect on 23.06.2016, as per G.O.457 dated 15.12.2016, the individuals who were getting special time scale of



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pay have already filed the writ petition in W.P.(MD)No.17663/2014. The cause of action for filing such writ petition is the impact of G.O.Ms.No.47 dated 02.03.2012.

11. The members of the petitioner's association in W.P.(MD) No.17663/2014 claimed despite they have passed 10th standard, registered themselves with District Employment Exchange, Pudukkottai, sponsored through the District Employment Exchange after certificate verification, appointed to work in various schools in Pudukkottai and given with special time scale of pay of Rs.1300-3000+ Grade pay Rs.300/- by virtue of G.O.Ms.No.47 School Education Department, dated 02.03.2012, the other Scavengers working in Education Department have got the benefit of regular time scale of pay of Rs.4800 – 10000 + Grade pay of Rs.1300/-. This Court felt it is discriminatory and struck down the the offending Clause of G.O.Ms.No.47 School Education Department, dated 02.03.2012. And consequent to the directions issued by the Court, G.O.Ms.No.50 School Education Department, dated 08.03.2019 was issued.



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12. Now the main point that has arisen in this case is whether these petitioners are also inclusive of the proceedings contested before the Courts and consequently protected in G.O.Ms.No.50 School Education Department, dated 08.03.2019. Admittedly the petitioners were employed as part time employees. However, they have subsequently allowed to get the said time scale of pay by creating two special posts under G.O.Ms.457, School Education Department dated 15.12.2016. Even though the petitioners were part time employees at the first instance, by virtue of subsequent G.O.Ms.457, School Education Department dated 15.12.2016 and by creation of two posts on par with other full time employees, the petitioners were started to be considered as full time employees and were given with special time scale of pay. So the broader principle that was taken into consideration in W.P.No.17663/2014 is “equal pay for equal work” which is enshrined in Article 14 and 16 of the Constitution of India.

13. It is held in the said order that there cannot be any question of estoppel against the employees if they have accepted to get lower wages when similarly placed persons were getting higher wages. In this regard, it



will be worthwhile to extract the relevant paragraphs of the said order:

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*“ 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 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.”*



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14. While passing the above order the Court was conscious of the fact that some of the Sweepers in the petitioner's association therein have consented to get the special time scale of pay though it is not on par with other similarly placed Sweepers who were reaping the benefit of G.O.Ms.No.47 School Education Department, dated 02.03.2012, for getting regular time scale of pay. It is needless to state that the petitioners have brought under full time work vide G.O.Ms.457, School Education Department dated 15.12.2016 and they are also doing some work which were done by the other Sweepers who are deriving regular time scale of pay.

15. In fact, the similarly placed Sweepers like the petitioners who were getting special time scale of pay prior to the order passed in W.P.No.17663/2014 were allowed to get the full time scale of pay by virtue of G.O.Ms.No.50 School Education Department, dated 08.03.2019. No doubt G.O.Ms.No.50 School Education Department, dated 08.03.2019 is an one time measure. But, what has to be considered is whether the petitioners were existing as Sweepers and they were deriving special time



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scale of pay at the time when G.O.Ms.No.50 School Education Department, dated 08.03.2019 was passed.

16. Even though the petitioners were appointed as part time employees and they were excluded from getting special time scale of pay, subsequently due to the benevolence of the Government, they got the benefit of special Government Order 457 dated 15.12.2016. In other words, by virtue of G.O.Ms.457 dated 15.12.2016, even if there is any irregularity in the appointment of the petitioners that stood condoned and the petitioners were treated on par with the other Sweepers who were getting special time scale of pay.

17. When the other Sweepers who were getting special time scale of pay got upgraded by virtue of G.O.Ms.No.50 School Education Department, dated 08.03.2019, the petitioners who were existing as Sweepers under special time scale of pay should also be brought under its ambit. Excluding them from getting the benefit of G.O.Ms.No.50 School Education Department, dated 08.03.2019, no doubt will be discriminatory



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between two similarly placed group of individuals. Hence there need not be any second thought in permitting the petitioners in getting the regular time scale of pay. Hence, I feel the impugned order dated 24.09.2019 is liable to be quashed and the petitioners should also be given with regular time scale of pay with effect from 25.01.2018.

18. In the result, this Writ Petition is allowed and impugned proceedings of the fourth respondent in proceedings No.Na.Ka.2640/Aa1/2019 dated 24.09.2019 is hereby quashed and the respondents are directed to extend the benefit of G.O.Ms.No.50, School Education Department, dated 08.03.2019 by granting the petitioners the Regular Time Scale of Pay of Rs.4800-10000 +1300 Grade Pay and grant notional benefits with effect from 25.01.2018 and monetary benefits from the date of filing of the writ petition, within a period of four weeks from the date of receipt of a copy of this order. No costs. Connected miscellaneous petition is closed.

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Index: Yes / No
Speaking order / Non-speaking order
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R.N.MANJULA ,J.

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