



WEB COPY



W.P.No.24068 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.06.2023

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THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No. 24068 of 2017

and

W.M.P.No.25388 of 2017

R.Munusamy

... Petitioner

Versus

- 1.The State of Tamilnadu rep. by its
Principal Secretary to Government,
School Education Department,
Secretariat,
Chennai-9
- 2.The Director of School Education,
College Road,
Chennai-6
- 3.The District Educational Officer,
Thiruppattur,
Vellore District.
- 4.The Head Master,
Government Higher Secondary School,
Koodanagaram,
Gudiyatham Taluk,
Vellore District

... Respondents



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PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, prays to issue a Writ of Certiorarified Mandamus to call for records connected in Lr.No.26906/Ni.Va3(2)/2015-5 dated 06.04.2016 of the 1st respondent and quash the same and directing the respondents to grant special time scale of pay to the petitioner based on the G.O.Ms.No.385, Finance (Pay Cell), Department, dated 01.10.2020 as was given to others in G.O.(1D).No.244, School Education (Pa.Ka.4(1)), Department, dated 23.06.2016 and G.O.(1PA).No.431, School Education(Ni.Va3(2) Department, dated 14.11.2016.

For Petitioner : Mr.A.R.Suresh
for Mr.K.Sanjay, Mr.K.Arumugam

For Respondents : Mr.M.S.Premkumar
Government Advocate

ORDER

This Writ Petition has been filed to call for records connected in Lr.No.26906/Ni.Va3(2)/2015-5 dated 06.04.2016 of the 1st respondent and quash the same and directing the respondents to grant special time scale of pay to the petitioner based on the G.O.Ms.No.385, Finance (Pay Cell), Department, dated 01.10.2010 as was given to others in G.O.(1D).No.244, School Education (Pa.Ka.4(1)), Department, dated 23.06.2016 and G.O.(1PA).No.431, School Education(Ni.Va3(2) Department, dated 14.11.2016.



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2. The specific case of the writ petitioner is that he was appointed as a Scavenger by the Head Master, Government Higher Secondary School, Koodanagaram by an order in Na.Ka.No.6/F5/98 dated 14.12.1998 on part time basis and he has completed more than 18 years of service without any remarks. It is the further case of the writ petitioner that the Government took a policy decision in G.O.Ms.No.385, Finance (Pay Cell), Department, dated 01.10.2010 and thereunder, the sanitary workers, who were working in Government Department and local bodies and had completed more than three years of service were entitled to get special time scale of pay with usual allowances. Therefore, the petitioner made a representation to the respondents on 13.04.2015 requesting to appoint him on special time scale of pay on the basis of the said G.O. However, there was no response to the said representation. Therefore, the petitioner was constrained to file a Writ Petition in W.P.No.18845 of 2015 before this Court seeking for issuance of mandamus. The said writ petition was disposed of on 29.06.2015 directing the 1st respondent to dispose of the petitioner's representation dated 13.04.2015 in the light of G.O.Ms.No.385, Finance (Pay Cell), Department,



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dated 01.10.2010 and G.O.Ms.No.653, Home(Police-15) department dated 07.08.2009 on merits and in accordance with law, within a period of twelve weeks. He would further submit that since no action was taken on the part of the 1st respondent, the petitioner was also constrained to file a contempt petition in C.P.No.747 of 2016 for alleged willful disobedience of order of this Court dated 29.06.2015. He would further submit that after receiving notice in the contempt petition only, the 1st respondent had rejected the claim of the writ petitioner for special time scale of pay on the ground that the G.O.Ms.No.385, Finance (Pay Cell), Department, dated 01.10.2010 is not applicable to part time sweepers. It is this rejection which is challenged in the present writ petition on the ground that G.O.Ms.No.385, Finance (Pay Cell), Department, dated 01.10.2010 does not differentiate between a part time employee and full time employee. It is the further contention of the petitioner that in similar cases, the 1st respondent has given the benefits of the said G.O to other employees. The 3rd respondent had filed a counter reiterating the reason assigned by the 1st respondent in rejecting the petitioner's claim on the ground that the G.O would not be applicable to the part time employee.



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3. Heard Mr.A.R.Suresh, the learned Counsel for the petitioner and the learned Government Advocate for the respondents.

4. The learned counsel for the petitioner invited the attention of this Court to G.O.(2D).No.6 dated 09.05.2016, G.O.(1D).No.244 dated 23.06.2016 and G.O.(1PA).No.431 dated 14.11.2016 to buttress his arguments that the Government has granted the benefits of G.O.Ms.No.385, Finance (Pay Cell), Department, dated 01.10.2010 to other part time employees. Therefore, he contended that the respondent's rejection of the petitioner's claim was arbitrary and against the principles of natural justice and the well enshrined rights of the petitioner under the Constitution of India have been deprived.

5. The learned Government Advocate for the respondents on the contrary would contend that the G.O.Ms.No.385, Finance (Pay Cell), Department, dated 01.10.2010 is a conditional order and no absolute right is conferred on the petitioner. He would also submit that the Head Master has no power to appoint the writ petitioner. Under such circumstances, the



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benefits of the said G.O cannot be given to the writ petitioner.

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6. This Court considered the rival submissions of counsel on either side. Admittedly, there is no dispute with regard to the fact that the writ petitioner is only a part time employee. It is not disputed that right from his date of appointment in the year 1998, he has been in service without any remarks. The only issue raised is that G.O.Ms.No.385, Finance (Pay Cell), Department, dated 01.10.2010 would not apply to the writ petitioner since he is a part time employee. However, this Court finds that in G.O.(1D).No.244 dated 23.06.2016 and G.O.(1PA).No.431 dated 14.11.2016, the very same G.O's have been applied and the benefits have been given to part time employees. Under such circumstances, this Court finds no impediment for the respondents to extend the benefits of G.O.Ms.No.385, Finance (Pay Cell), Department, dated 01.10.2010 to the writ petitioner also.

7. The submissions of the learned Government Advocate for the respondents is unable to dispute the fact that the respondents extended the benefits of the very same G.O to other part time employees. However, when



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it comes to writ petitioner, the benefits are denied stating that he is only a part time employee. With regard to the objection that the appointment was made by the Head Master, G.O.(1PA).No.431 dated 14.11.2016 is a similar case where an employee was appointed by the Head Master and given benefits of G.O.Ms.No.385, Finance (Pay Cell), Department, dated 01.10.2010. None of the objections raised by the respondents, are therefore, sustainable.

8. In view of the above facts and circumstances of the case, this Court finds merits in this writ petition. Accordingly, this Writ Petition is allowed. Consequently, connected miscellaneous petition is closed. No order as to costs.

02.06.2023

Index: Yes/ No
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P.B.BALAJI, J.,

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To

WEB COPY

1. The Principal Secretary to Government,
School Education Department,
Secretariat,
Chennai-9
2. The Director of School Education,
College Road,
Chennai-6
3. The District Educational Officer,
Thiruppattur,
Vellore District.
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