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W.P.(MD)NO.8799 OF 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 30.06.2023

PRONOUNCED ON : 25.07.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.8799 of 2023 AND
W.M.P.(MD)No.8043 of 2023

R.Pallavan

... Petitioner

Vs.

1. The Chief Educational Officer,
Chief Educational Office,
Sivagangai.
2. The District Educational Officer,
Thevakottai,
Sivagangai District.
3. The Head Master,
Government High School,
Sirugapatty,
Sivagangai District.

... Respondents

Prayer: 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 2nd respondent dated 18.03.2021 in Na.Ka.No.2652/A1/2019 and to quash the same, inconsequentially directing the respondents to permit the petitioner to rejoin duty by granting extraordinary leave on loss of pay for the period from 02.06.2016 to 24.04.2019 based on the Medical Board Report dated 20.01.2020 in terms of Rule 15 to 23 and 85 of the Fundamental Rules and



consequently direct the respondents to pay Regular Time Scale of Pay by extending the benefit of G.O.Ms.No.50 Education Department dated 08.03.2019.

For Petitioner : Mr.R.Rajamohan

For Respondents : Mr.N.Satheesh Kumar,
Additional Government Pleader.

* * *

ORDER

Heard the learned counsel on either side.

2. The petitioner was appointed as Sweeper in the third respondent school vide order dated 23.11.2012 passed by the second respondent. He was in the special time scale of pay of Rs.1,300 – 3,000 with Grade Pay of Rs.300/-. His appointment was made in terms of G.O.Ms.No.47 School Education Department dated 02.03.2012. The petitioner was working without giving room for complaint till 02.06.2016. Thereafter he remained unauthorisedly absent. The petitioner's case is that he was suffering from Paranoid Schizophrenia. He became normal only in the year 2019. He sought to rejoin. He wanted the period from 02.06.2016 to 24.04.2019 to be regularised. He produced medical certificates. But his request



three years. The question of taking disciplinary action did not arise because the petitioner was not a member of any service.

By the time, the petitioner was ready to rejoin duty, the post itself got abolished. The department has now outsourced the work of sweepers and scavengers. Therefore, the order impugned does not warrant any interference. The respondents pressed for dismissal of the writ petition.

5.I carefully considered the rival contentions and went through the materials on record.

6. Vide G.O(Ms)No.47 School Education (R1) Department dated 02.03.2012 a number of Scavenger posts were sanctioned and the appointees were directed to be paid special time scale of pay of Rs.1,300 – 3,000 +Grade Pay of Rs.300. The persons who were appointed pursuant to the said Government Order, formed an Association and they 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



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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



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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.



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(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.

10. This Writ petition is allowed, accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed "

7. The order passed by this Court was put to challenge in Writ Appeal but the Hon'ble Division Bench declined to interfere. G.O(Ms)No.50 School Education Department dated 08.03.2019 was issued for implementing the order passed by



this Court. The persons who were appointed pursuant to G.O(Ms)No.47 School Education (R1) Department dated 02.03.2012 were placed in time scale of pay on par with the Scavengers who working in the other departments. It is true that when the order of this Court was implemented vide G.O(Ms)No.50 dated 08.03.2019, the petitioner was unauthorisedly absent.

8. I posed a specific question to the learned Additional Government Pleader if the petitioner was formally terminated from service after issuing notice for unauthorised absence. In the counter affidavit filed by the respondents, it has been admitted that a formal order of termination was not issued. Admittedly, the petitioner was appointed pursuant to a Government Order. He was in service for almost four years. It is true that he remained unauthorisedly absent. The petitioner in his representation has stated that since he was suffering from Paranoid Schizophrenia, he could not report for duty for over three years.

9. Taking into account the nature of duties performed by the petitioner, one has to take an indulgent and lenient view. It is not as if the Government is going to absorb him and grant



him pension far from it. The only benefit of the order passed by this Court in W.P(MD)No.17663 of 2014 is that the appointees will have better pay. When W.P(MD)No.17663 of 2014 was filed, the petitioner was very much working in the third respondent School. He stopped reporting for duty only from 02.06.2016. Since the respondents did not issue any show cause notice or pass any formal order of termination, the employer-employee relationship did not get snapped. I reject the stand of the respondents that there was no need to pass a formal termination order. When the petitioner was receiving pay from the State Exchequer for four years, his remaining unauthorised absence by itself will not lead to automatic snapping of the employer-employee relationship. A formal order of termination is required. No such order was passed. Therefore, the petitioner is very much entitled to the benefit of the order passed by this Court in the aforesaid writ petition.

10. In this view of the matter, in view of my specific finding that employee-employer relationship has not snapped and in view of the nonpassing of any order of termination of respondents, the order impugned in this writ petition are set aside.



11. The respondents are directed to post the petitioner in the post of Sweeper either in the third respondent School or in any other institution. The petitioner will be entitled to the benefit of the order dated **25.01.2018** made in ***W.P(MD) No.17663 of 2014 (School Education Department, Scavengers Welfare Association, Rep. by its Secretary V. The Principal Secretary, School Education Department, Chennai)***. However, the petitioner can claim monetary benefit only with effect from the date on which the petitioner formally reports for duty pursuant to the proceedings that shall be issued by the second respondent.

12. This writ petition is allowed on these terms. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

25.07.2023

NCS : Yes / No
Index : Yes / No
Internet : Yes / No
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To:

1. The Chief Educational Officer,
Chief Educational Office,
Sivagangai.
2. The District Educational Officer,
Thevakottai,
Sivagangai District.
3. The Head Master,
Government High School,
Sirugapatty,
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G.R.SWAMINATHAN,J.

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