



W.P(MD)No.16471 of 2020

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.03.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.16471 of 2020

and

W.M.P(MD)No.13772 of 2020

S.Veerassamy

... Petitioner

Vs

- 1.The Principal Secretary,
School Education Department,
Secretariat,
St.George Fort, Chennai.
- 2.The Director,
Tamil Nadu School Education Department,
Chennai – 06.
- 3.The Joint Director,
Tamil Nadu School Education Department,
Chennai.
- 4.The District Education Officer,
District Education Office,
Pudukottai.
- 5.The Head Mistress,
Government Girls Hr.Sec.School,
P.Alagapuri Post,
Thirumayam Taluk,
Pudukkottai District.

... Respondents



W.P(MD)No.16471 of 2020

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned orders passed by the third respondent in his proceedings in O.Mu.No.41038/A5/E1/2020 dated 13.10.2020 and the fourth respondent by his proceedings Na.Ka.No.1216/A/2019 dated 12.10.2020 and directing the respondents to permit the petitioner to rejoin his duty as scavenger in the Government Hr.Sec.School, P.Alagapuri, Pudukkottai District and quash the same as arbitrary and illegal.

For Petitioner : Mr.Arul Jenifer
for Mr.P.Jamalmohamed

For Respondents : Mr.N.Satheeskumar
Additional Government Pleader

ORDER

Heard the learned counsel on either side.

2. The writ petitioner belongs to Scheduled Caste community. He studied up to 8th standard. The petitioner was appointed as Scavenger vide proceedings dated 23.11.2012 issued by the District Educational Officer, Pudukottai. The appointment was made pursuant to the issuance of G.O(Ms)No.47 School Education (R1) Department dated 02.03.2012. The petitioner was given special time scale of pay. The petitioner was working in the fifth respondent school from 23.11.2012 till 07.01.2018. The petitioner did



W.P(MD)No.16471 of 2020

not report for duty thereafter. The petitioner submitted a representation dated 27.11.2019 seeking re-posting. His request was rejected by the District Educational Officer, Pudukottai vide order dated 12.10.2020. The Joint Director of School Education also passed order on the same effect on 13.10.2020. Challenging the said order rejecting his request for rejoining, the present writ petition came to be filed.

3. The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to quash the impugned orders and grant relief as prayed for.

4. The respondents have filed counter affidavit and also additional counter affidavit. The learned Additional Government Pleader took me through their contents. The stand of the respondents is that the present policy is to outsource the Group D posts including the post of Scavenger. The Department absorbed the scavengers pursuant to the order dated 25.01.2018 passed by this Court in W.P(MD)No.17663 of 2014. The said exercise was completed in March 2019 itself. Thereafter G.O(Ms)No.50 School Education Department dated 08.03.2019 mandated that in future, the posts created pursuant to G.O(Ms)No.47 School Education (R1) Department dated 02.03.2012 and



W.P(MD)No.16471 of 2020

earlier will not be filled up and that all future vacancies would be filled up only through outsourcing mode. The stand of the learned Additional Government Pleader appearing for the respondents is that in view of G.O(Ms)No.50 School Education (Pa.Ka.4(1)) Department dated 08.03.2019 and G.O(Ms)No.75 School Education (S.E.4(1)) Department dated 16.04.2019 the request of the petitioner cannot be accepted. He pressed for dismissal of the writ petition.

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



W.P.(MD)No.16471 of 2020

WEB COPY

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.



W.P(MD)No.16471 of 2020

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.*

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

6. The order passed by this Court was put to challenge in the Writ Appeal and the Hon'ble Division Bench declined to interfere. In these circumstances, G.O(Ms)No.50 School Education Department dated 08.03.2019 came to be 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 Scavengers who



W.P(MD)No.16471 of 2020

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. 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 additional 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 six years. It is true that he remained unauthorisedly absent. The petitioner in his representation has given certain reasons as to why he did not report for duty. He states that he was working in Government Girls Higher Secondary School and he wanted the employers to imagine the conditions in which he would have worked. According to him, his wife abruptly left him along with children and that led to mental depression and that is why, he abruptly abstained from reporting for duty. The conduct of the petitioner cannot be condoned. Even according to the petitioner, he was the sole scavenger taking care of the fifth respondent school. It is a Government institution and a large number of girls students are studying there. If suddenly, the petitioner stopped reporting for duty, the consequences can very well be imagined. But notwithstanding the unacceptable conduct of the petitioner, taking into account the nature of duties performed by him, one has to take an

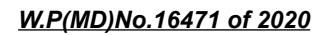


W.P(MD)No.16471 of 2020

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 fifth respondent School. He stopped reporting for duty only from 08.01.2018. Since the respondents have did not issue any show cause notice or pass any formal order of termination, the employer-employee relationship did not get snapped. Therefore, the petitioner is very much entitled to the benefit of the order passed by this Court in the aforesaid writ petition.

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

8. The respondents are directed to post the petitioner in the post of Scavenger either in the fifth 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. However, the petitioner can claim monetary benefit only with effect from the date on which the petitioner formally reports



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

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
MGA

1. The Principal Secretary,
School Education Department,
Secretariat,
St. George Fort, Chennai.
2. The Director,
Tamil Nadu School Education Department,
Chennai – 06.
3. The Joint Director,
Tamil Nadu School Education Department,
Chennai.
4. The District Education Officer,
District Education Office,
Pudukottai.



WEB COPY



W.P(MD)No.16471 of 2020

G.R.SWAMINATHAN, J.

MGA

5.The Head Mistress,
Government Girls Hr.Sec.School,
P.Alagapuri Post,
Thirumayam Taluk,
Pudukkottai District.

W.P(MD)No.16471 of 2020

and

W.M.P(MD)No.13772 of 2020

29.03.2023