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W.A.No.3730 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.A.No.3730 of 2024
and
C.M.P.Nos.29438 of 2024

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,
D.P.I. Campus,
Chennai – 600 006.

3.The Joint Director,
School Education (Personnel),
D.P.I.Campus,
Chennai – 600 006.

4.The District Educational Officer,
Arani.

... Appellants/Respondents

Vs.

1.Saroja

2.R.Padmavathy

... Respondents/Petitioners



W.A.No.3730 of 2024

Prayer: Appeal under Clause 15 of the Letters Patent, pleased to set aside the Order passed in W.P.No.19069 of 2020 dated 02.11.2023 and allow the Writ Appeal.

For Appellants : Mr.U.M.Ravichandiran
Special Government Pleader

For Respondents : M/s.S.Suneetha

JUDGMENT

(Judgment of the Court was delivered by **C.SARAVANAN, J.**)

This intra Court appeal is directed against the impugned order dated 02.11.2023 passed by the Writ Court in W.P.No.19069 of 2020. By the impugned order, the Writ Court has allowed the Writ Petition filed by the respondents herein. Operative portion of the impugned order of the Writ Court reads as under:-

“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



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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:

“ 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



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other difference. The case of the members of the petitioner's Association therefore deserves to be allowed.”

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 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



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Department, dated 08.03.2019, no doubt will be discriminatory 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.”

2. The impugned order is sought to be assailed by the appellants herein on the ground that the respondents/petitioners were appointed purely on temporary basis on a consolidated pay as part-time sweepers on 21.03.2002 by the then Headmaster of Government Higher Secondary School, S.V.Nagaram, Tiruvannamalai District. It is further submitted that while passing the impugned order, the Writ Court has not considered that the Government had created two part-time sweeper posts for the petitioners and fixed their pay in the Special Scale of Pay as Rs.13,100-3000+300 Grade Pay with reference to G.O.Ms.No.385, Finance (Pay) Department, dated 01.10.2010 vide G.O.(1P)No.457, School Education [CC3(2)] Department, dated 15.12.2016.



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3. It is submitted that the Writ Court has failed to note that sweepers were appointed as per the Go.O.Ms.No.47, School Education (R-1) Department, dated 02.03.2012 on full time basis by following the Tamil Nadu Basic Service Rules. It is submitted that the respondents/petitioners' case cannot be considered on par with those who had filed W.P.(MD).No.17663 of 2014, as the respondents/petitioners were appointed only on part-time basis by the Headmaster of the aforesaid school as mentioned above.

4. It is the further case of the appellant that the Writ Court has also failed to consider the G.O.Ms.No.50, School Education Department, dated 08.03.2019 which was issued to comply with the order passed by this Court in W.P.(MD).No.17663 of 2014. Hence, it is submitted that the impugned order passed by the Writ Court is liable to be interfered with.

5. The learned Special Government Pleader for the appellants had relied on the following cases:-

- “(i) *State of Maharashtra Vs. Bhagwan* reported in (2022) 4 SCC 193;
- (ii) *State of Rajasthan Vs. Daya Lal* reported in (2011) 2 SCC 429 and



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(iii) ***State of Tamil Nadu Vs. M.Seeniammal*** reported in (2014) 4 LW 657.”

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6. We have considered the arguments advanced by the learned Special Government Pleader for the appellants and the learned counsel for the respondents.

7. We are of the view, the impugned order passed by the Writ Court is well reasoned and does not warrant any interference. That apart, there cannot be any discrimination between those who had approached the Writ Court earlier and those who had approach the Writ Court later. The observation of the Writ Court that “*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 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*



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25.01.2018” cannot be found fault with. Therefore, the benefit of

G.O.Ms.No.50, School Education Department, dated 08.03.2019, which was extended to the respondents/petitioners cannot be found fault with. In our view, the order passed by the Writ Court is well reasoned as considered the attending circumstances and therefore does not warrant any interference. We are therefore inclined to dismiss this Writ Appeal.

8. Accordingly, this Writ Appeal is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

[R.S.K., J.]

[C.S.N., J.]

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Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation : Yes/No

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