



W.A(MD) Nos.1021 to 1023 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.09.2024

CORAM:

**THE HONOURABLE MR.JUSTICE C.V. KARTHIKEYAN
and
THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD**

**W.A(MD) Nos.1021 to 1023 of 2018
and
C.M.P (MD) Nos.7146 to 7150 of 2018**

W.A.(MD) No.1021 of 2018

- 1.The District Educational Officer,
Ramnad District.
- 2.The Assistant Elementary Educational Officer,
Elementary Educational Office,
R.S.Mangalam, Ramnad District. ... Appellants/Respondents

-VS-

K.Shantha ... Respondent/Writ Petitioner

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order passed in W.P. (MD) No.18211 of 2014 dated 31.03.2018.

W.A.(MD) No.1022 of 2018

- 1.The District Educational Officer,
Ramnad District.
- 2.The Assistant Elementary Educational Officer,
Elementary Educational Office,



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R.S.Mangalam, Ramnad District.
3.The Director of School Education,
College Road, Chennai.

4.The Joint Director of School Education,
(Employees Section), College Road,
Chennai.

5.The Secretary to Government,
School Education Department,
Chennai.

... Appellants/Respondents

-VS-

K.Shantha

... Respondent/Writ Petitioner

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, to set aside
the order passed in W.P. (MD) No.21045 of 2017 dated 31.03.2018.

W.A.(MD) No.1023 of 2018

1.The District Educational Officer,
Ramnad District.

2.The Assistant Elementary Educational Officer,
Elementary Educational Office,
R.S.Mangalam, Ramnad District.

... Appellants/Respondents

-VS-

K.Shantha

... Respondent/Writ Petitioner

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, to set aside
the order passed in W.P. (MD) No.2986 of 2015 dated 31.03.2018.

For Appellants : Mr.M.Senthil Ayyanar
Government Advocate
(in all the writ appeals)



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For Respondent : Mr.P.T.S.Narendravan
(in all the writ appeals)

COMMON JUDGMENT

All the three writ appeals had been filed by the respondents in three separate writ petitions which were filed by the respondent herein, K.Shantha.

2.The writ petitioner, K.Shantha, had initially filed W.P. (MD) No.18211 of 2014 in the nature of a mandamus seeking a direction against the second respondent in the writ petition, namely, The Assistant Elementary Educational Officer, Elementary Educational Office, R.S.Mangalam, Ramnad District, to regularise her service in special time scale of pay as Sweeper in accordance with G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006.

3.This writ petition had been necessitated, since, the writ petitioner had been initially appointed as a Sweeper in the Office of the Elementary Educational Office, R.S.Mangalam, Ramnad District on 18.09.1989 with a fixed salary of Rs.100/- per month which she received



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till 31.12.1993. Thereafter, the salary was increased to Rs.125/- per month. Out of that amount, Rs.10/- had been deducted towards family benefit fund. Thereafter, the said respondent informed her that she had been wrongly paid Rs.125/- per month and that she has to receive only Rs.90/- per month. Finally her pay had been revised to Rs.335/- per month from 01.04.1996.

4.It was the grievance of the writ petitioner that she was not paid even that amount. Finally, owing to her long period of service, special time scale of pay at Rs.1300-3000+300 had been fixed on 15.10.2010. The writ petitioner had been receiving that salary in that particular time scale of pay. By an order on 01.07.2014, it was held that she had been paid excess amount of Rs.1,03,415/- since she was not eligible to be brought into regular time scale and therefore, she was directed to return back Rs.1,03,415/-.

5.It is under those circumstances, she had filed the first writ petition stated above, namely, W.P. (MD) No.18211 of 2014. An order of interim stay had been granted by a learned Single Judge of this Court. However, owing to the necessity to continue in her job and there being



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two versions given, one by her that she was forced to return back the amount and the other on behalf of the respondents that she had voluntarily re-paid, she, as a fact re-paid Rs.1,03,415/-. At this juncture, she had then filed W.P. (MD) No.2986 of 2015 in the nature of certiorarified mandamus relating to the proceedings by which she was directed to repay the amount. Thereafter, she again filed W.P. (MD) No. 21045 of 2017 seeking to regularise her services in special time scale of pay as Sweeper. She placed reliance on G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006.

6.All the three writ petitions came up for consideration before a learned Single Judge, who noted the facts and had also *suo motu* impleaded as the fifth respondent, the Secretary to Government, School Education Department, Chennai in W.P. (MD) No.21045 of 2017. A direction was issued to the said fifth respondent that the writ petitioner, should be brought into the appropriate time scale of pay and such an order should be issued within a period of eight weeks from the date of receipt of a copy of the order of the learned Single Judge.

7.With respect to the grievance of the writ petitioner that she



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had to repay the amount of Rs.1,03,415/-, the learned Single Judge observed that it had been repaid even though there was a specific order of interim stay. The learned Single Judge placed reliance on the judgment of the Hon'ble Supreme Court in State of **Punjab -vs- Rafiq Masih** reported in **(2015) 4 SCC 334**, relating to recovery of salary from Class – III and Class – IV employees and held that the ratio therein would squarely apply to the writ petitioner, who was working as Sweeper therefore, had allowed W.P. (MD) No.2986 of 2015. The effect of this order was that the writ petitioner was recognized as a Sweeper and was recognized as having come under regular time scale of pay with effect from 15.10.2010.

8.In view of these two directions issued, the learned Single Judge also disposed the other two writ petitions, namely, W.P. (MD) No. 18211 of 2014 and W.P. (MD) No.21045 of 2017.

9.The respondents in the three writ petitions have filed the present writ appeals. Pending the writ appeals, an order of interim stay was also granted.

10.During the hearing of the appeals, we observed that the



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District Educational Officer, Ramanathapuram, the third respondent in the writ petition by letter dated Na.Ka.No.5829/A1/2015, dated 30.03.2016, had addressed the fourth respondent, Joint Director of School Education (Employees Section), Chennai, to seeking a decision regarding regularisation of the service of the writ petitioner.

11.The third respondent, District Educational Officer, had addressed the fourth respondent as early as 30.03.2016. We found from the records that the fourth respondent, Joint Director of School Education (Employees Section), Chennai, had not taken any decision for nearly eight years. We had therefore directed the said fourth respondent to pass an order in response to the letter dated 30.03.2016 of the third respondent.

12.We are now placed with the proceedings of the fourth respondent, dated 06.09.2024 in Na.Ka.No.26805/A5/E2/2016, wherein, the fourth respondent had enclosed an order of the Hon'ble Supreme Court and that since the issues are pending before the Hon'ble Supreme Court and since there is an order of stay, a reply could not be issued. But that does not answer the issue as to why he did not pass any order right



from the year 2016 onwards.

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13.The issues have been pending before the Hon'ble Supreme Court only from the year 2022 onwards. Though, at the time of admission of the writ appeals, an interim stay had been granted, a further perusal of records shows that the writ petitioner had been only exploited during her service. She had joined as a Sweeper on a monthly pay of Rs. 100/- per month on 18.09.1989. She had been working continuously till the year 2020. She had retired on attaining the age of superannuation in the year 2020. Her monthly salary was initially fixed as Rs.100/-. It was thereafter increased to Rs.125/- and once again decreased to Rs.90/- but, she continued to work. Thereafter, it had been finally fixed at Rs.335/- on 01.04.1996. On 15.10.2010, she was brought into special time scale of pay of Rs.1300-3000+300.

14.Thus, the respondents in the writ petition had taken a conscious decision, taking note of the period of service rendered by the writ petitioner to bring her into a special time scale of pay. They had also paid the time scale of pay till 01.07.2014. There is no indication in the



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order dated 01.07.2014 that the writ petitioner was put on notice and she was given a fair opportunity of being heard, or that she was granted an opportunity to put forth her objections. The said order was passed only because she had given a representation to regularise her service. She had been brought into special time scale of pay but her service was not regularised. It was for that reason that she had given a representation.

15.We find from the records that instead of either rejecting that particular representation and not bringing her into time scale of pay, the respondents in the writ petition had passed an order that since approval will have to be obtained from the Department Head, the entire salary which had been paid to her had been withdrawn and she had been directed her to repay the amount. As a dutiful servant, she had repaid the amount of Rs.1,03,415/-. Then they left her high and dry. They did not reconsider whether she should be brought back into time scale of pay even though she had put in more than ten years of service. She had in fact put thirty years of service.

16.It is contended by the learned Counsel for the writ petitioner that she had not been paid even the retirement benefit even



though she had retired in the year 2020. She had worked continuously only on consolidated pay.

17.We hold that this is a clear case of oppression against a fourth class servant, who had been working without any default on her part right from the year 1989. The learned Single Judge had impleaded as a further respondent in the writ petition, the Secretary to Government, School Education Department, Chennai and had issued a direction that the said respondent should regularise the services of the writ petitioner.

18.The learned Government Advocate stated that the writ petitioner was not entitled for regularisation in accordance with G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006 and G.O.(Ms) No.74, Personnel and Administrative Reforms (F) Department, dated 27.06.2013 and also owing to the judgment of the Hon'ble Supreme Court reported in **2014 (4) SCC 769, Secretary to School Education -vs- R.Govindaswamy** and the judgment of the Hon'ble Supreme Court reported in **2017 (4) SCC 113, Secretary to Government, Commercial Taxes and Registration Department -vs- A.Singamuthu**. It had been contended that part-time employees are not



entitled for regularisation.

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19.The learned Government Advocate also placed reliance on the judgment of the Hon'ble Supreme Court reported in **2012 (8) SCC 417** that mistaken payment could be recovered.

20.The issue in this case has not occurred owing to seeking regularisation by the writ petitioner but owing to the fact that the respondents themselves had taken a conscious decision by order dated 15.10.2010, to bring her into special time scale of pay. Having brought her into special time scale of pay and having paid her the salary from 15.10.2010 till 01.07.2014, they had then withdrawn the same only because she had given a representation seeking regularisation of service. This clearly indicates that the writ appellants/respondents in the writ petitions had acted vindictively as against the writ petitioner. They could have let the matter rest at there and could have continued the time scale of pay to the writ petitioner but they had withdrawn the same. At the time of withdrawing the same, though she had given only a representation seeking for regularisation, they had over-reached themselves and had also directed recovery of the amount paid.



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21.It is not a case of excess payment made but payment made consequent to an order passed on 15.10.2010 putting her the regular time scale of pay. There was no mistake in the said payment. It was paid only consequent to an order dated 15.10.2010. When that particular order had been passed on 15.10.2010 and a subsequent order had passed reversing that particular order, the writ petitioner must have been heard, an opportunity must have been given and her objections should have been examined. Failure to undertake this exercise, has invited the order passed by the learned Single Judge. We therefore confirm the order of the learned Single Judge. The directions therein should be complied with on or before 30.09.2024.

22.This order has been passed in the presence of Ms.R.Tamilarasi, Block Educational Officer, R.S.Mangalam, Ramanathauram District, who had been informed about the nature of the order.

23.With the above direction, these Writ Appeals stand



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dismissed. Consequently, the connected miscellaneous petitions are closed. No costs.

24.List the matter on 01.10.2024 'for reporting compliance'.

[C.V.K., J.] [J.S.N.P., J.]
10.09.2024

Index: Yes/No
Speaking/Non-Speaking
Neutral citation: Yes/No
PKN

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