



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE **R. MAHADEVAN**

**WP(MD)No.2470 of 2018 and
WMP(MD) .No.2670 of 2018**

WEB COPY

1.S. Muthu

2.M. Mariyappan

... Petitioners

Vs.

1.Government of Tamil Nadu,
rep. by its Secretary,
Youth Welfare and Sports Development (YW) Department,
Fort St. George, Chennai.

2.The Director,
Directorate of National Cadet Corps for Tamil Nadu,
Pondicherry and Andaman Nichobar,
Fort St. George, Chennai.

3.The Group Commissioner,
NCC Group Headquarters,
No.86/1, P.T. Rajan Road,
Madurai.

4.The Group Commander,
NCC Group Headquarters,
Trichy - 1.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order in G.O(Ms). No.79, Youth Welfare and Sports (YW) Department, dated 19.12.12 of the first respondent, quash the same in so far as fixing the scale of pay of the petitioners in the special time scale of pay with basic Rs.1,300/- to Rs.3,000/- + G.P.300/- and consequently, direct the respondents to fix their scale of pay in the scale of pay payable to the post of Permanent / full time Sweepers of Government of Tamil Nadu w.e.f. 19.12.12 and to pay arrears of the same from 19.12.12 and all other consequential benefits, together with 18% interest per annum.

For Petitioners : Mr. K.K. Samy

For Respondents : M/s.S.Srimathy

Special Government Pleader

**ORDER**

The petitioners, sought to quash the impugned order passed by the first respondent in G.O.Ms.No.79, dated 19.12.12, insofar as fixing the scale of pay under the head of special time Scale of pay and other consequential relief.

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2. When the matter was taken up for consideration, the learned counsel appearing for the petitioners and the learned Special Government Pleader appearing for the respondents, jointly submitted that this issue has already been settled by the order of this Court in WP(MD).No.7884 of 2013, dated 19.09.2014, wherein, at paragraph Nos.21, 22 and 24, it is held as follows:

21. At this juncture, it is relevant to extract Rule 5 (2)(a) of the Tamil Nadu Basic Rules - Rule 5(2) Educational Qualification:

(a) No person shall be eligible for appointment by direct recruitment to any category of the service in class I, II and III unless he has passed the III form or the VIII Standard (or the ESLC) of a recognized school (i.e) a school maintained by or opened with the sanction of the Government of Tamil Nadu or to which recognition has been accorded by the Director of School Education under the Educational Rules of the State...."

Rule 5 (2)(a) states that one should have passed 8th standard as qualification for appointment to Class I II and III of the Basic service and Rule 5(2)(aa) makes it very clear that the qualification prescribed for appointment to the post in Class IV service is that one must be able to read and write in Tamil only.

22. Thus, the qualification prescribed in the Tamil Nadu Basic Service Rules is only read and write in Tamil. The recruitment was also made about more than 17 years back in the case of the 1st petitioner and 13 years back in the case of the 2nd petitioner and still the same rules continue to be in operation and only in cases where persons were appointed irregularly G.O.Ms.No.22 or G.O.Ms.No.74 as the case may be, will apply and as far as the case of the petitioners is concerned, they were not irregularly appointed and they were appointed as Scavengers (Toilet Cleaners) following the Tamil Nadu Basic Service Rules in the Government Colleges. However, they were kept as such for decades together without regularizing their services and when they sought for regularization, the Government issued the impugned G.O. Regularizing their services and granted pay in the scale of pay Rs.1300-3000 with grade pay of Rs.300/-. Further, on a perusal of G.O.Ms.No.385 dated 01.10.2010, it is clear that is only applicable to the part time employees and scale of pay of Rs.1,300-3,000/- with



grade pay of Rs.300/- was granted to part time scavengers, sweepers, etc., It is not the case of the respondents either in the G.O or in the counter affidavit that the petitioners are appointed as part time employees. Further, neither in the appointment orders nor in the regularization orders, it is stated that they were appointed as part time employees. Further G.O.Ms.No.92 no where states that the petitioners are part time scavengers.

24. Accordingly, the Writ Petition is allowed. The impugned orders are quashed as far as the petitioners are concerned and a direction is issued to the respondents to pass orders regularly appointing the petitioners from the date of initial appointment as full time scavengers in the proper scale of pay applicable to the full time scavengers with all monetary benefits. The respondents are directed to comply with the aforesaid direction within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed."

3. Following the aforesaid order, which holds good in respect of the Writ Petitioners herein, the Writ Petition stands allowed by setting aside the impugned order passed by the first respondent as far as the petitioners are concerned. The respondents are directed to pass appropriate orders with regard to fixing the scale of pay and paying the arrears of the same, as indicated in the order dated 19.09.2014 in WP(MD).No.7884 of 2013. Such an exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

/ True Copy /

Sub Assistant Registrar(CS)

trp

To

1.The Secretary to Government of Tamil Nadu,
Youth Welfare and Sports Development (YW) Department,
Fort St. George, Chennai.

2.The Director,
Directorate of National Cadet Corps for Tamil Nadu,
Rendicherry and Andaman Nichobar,
Fort St. George, Chennai.



3.The Group Commissioner,
NCC Group Headquarters,
No.86/1, P.T. Rajan Road, Madurai.

4.The Group Commander,
NCC Group Headquarters, Trichy - 1.

+1 CC to M/s.SPL GP (SR-56919[F] dated 27/03/2019)

+1 CC to M/s.K.K.SAMY, Advocate (SR-57047[F] dated 27/03/2019)

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WMP(MD) .No.2670 of 2018
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