



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
22.09.2020	01.10.2020

CORAM:

THE HONOURABLE MR. JUSTICE R. SURESH KUMAR

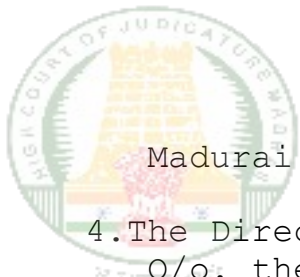
**W.P. (MD) No. 8092 of 2020
and W.M.P. (MD) No. 7518 of 2020**

1. P. Pandiaraja
2. P. Mariappan
3. J. Nagoor Maideen
4. P. Senthilkumar
5. M. Eswari
6. M. Pandipriya
7. V. Krishnamoorthy
8. A. Chandralekha
9. V. Mariya Yagappan
10. R. Gurumadhavan
11. K. Anbukarasi
12. G. Venkatesh Prabu
13. R. Kadarkarai
14. N. Sathyan
15. K. Muniyandi
16. C. Saravanakumar
17. M. Mangeswaran
18. S. Syed Aref
19. S. Nainar
20. G. Subathradevi

... Petitioners

Vs.

1. The State of Tamil Nadu represented by the
Secretary to Government
Public Works Department
Secretariat, Fort St. George,
Chennai.
2. The Chief Engineer (General) /
The Engineer in Chief WRD
Public Works Department
Chepauk, Chennai.
3. The Chief Engineer,
Water Resource Department
Public Works Department
Madurai Region,



Madurai

4. The Director of Vigilance and Anti Corruption
O/o. the Director of Vigilance and Anti-Corruption,
Chennai.

5. The Employees Provident Fund Organisation,
Rep. by its Regional Provident Fund,
Commissioner, Madurai.

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the respondents 1 to 3 to permit the petitioners to continue as Nominal Muster Roll (NMR) and to pay minimum of pay scale applicable to the basic service as per order dated 31.01.2019 made in W.P. (MD) No. 24081/2018 within a stipulated time may be fixed by this Court till the permanent absorption and consequently direct the 4th respondent to conduct a detailed enquiry in respect of persons who have producing bogus service certificates before the Public Works Department Screening Committee and secured employment in Public Works Department in G.O. (Ms) No. 137 Public Works (2) Department dated 13.09.2019 and G.O. (Ms) No. 233 Public Works (C2) Department dated 06.12.2019 and to take necessary action.

For Petitioners

: Mr. M. Saravanakumar

For Respondents

: Mr. Vijay Narayan

Advocate General assisted by

Ms. J. Padmavathi Devi for R1 to R4

Special Government Pleader

Mr. A. John Xavier standing counsel for R5

ORDER

This petition has been filed seeking for issuance of a Writ of Mandamus directing the respondents 1 to 3 to permit the petitioners to continue as Nominal Muster Roll employees (NMR employees) and to pay minimum pay scale applicable to the basic servant as per the order of this Court dated 31.01.2019 made in W.P. (MD) No. 24081/2018 within a stipulated time and till the permanent absorption. Consequently the fourth respondent can be directed to conduct a detail enquiry in respect of the persons, who produced bogus service certificates before the Public Works Department Screening Committee and secured employment in Public Works Department under G.O. Ms. No. 137 Public Works (2) Department dated 13.09.2019 and G.O. Ms. No. 233 Public Works (C2) Department dated 16.12.2019 and take



necessary action.

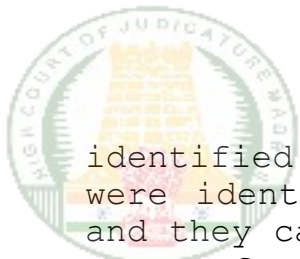
2. The following facts as averred in the affidavit filed in support of this writ petition are required to be noticed:

The petitioners had responded to the Public Works Department (PWD) by way of filing applications pursuant to the call for made in this regard by the PWD for appointment/engagement of Field Organisers. Accordingly, PWD conducted written test followed by interview, based on which and the marks secured in the written test as well as interview, all these petitioners were selected by the selection committee and appointed as Field Organiser (Mazdoor) on 22.07.2013 in PWD as NMR's on consolidated pay and worked for more than seven years.

2.1. It is the further case of the petitioners that, since has been continuously working for more than seven years, they have been in fond hope that, at one point of time their services would be regularized and they would be permanently absorbed as regular employees in the PWD. In this context, it is the further case of the petitioners that, they had undergone a training programme in Irrigation Management Training Institute (under Water Resources Organization of Tamil Nadu PWD) at Tiruchirappalli and successfully completed the said training. Though under the initial appointment, these petitioners were appointed/engaged for a particular period, however, the said employment period was subsequently extended from time to time by the respondents 1 and 2. It is also the case of the petitioners that, for the past two years, the respondents are extracting works from these petitioners, however, without paying the salary with an assurance that, the Government will consider their case to bring them under regular time scale of pay, therefore, the petitioners are eagerly waiting for permanent absorption in the department.

2.2. It is the further case of the petitioners that, while so, in the year 2018, one Rajaselvan filed a writ petition before this Court in W.P. (MD) No. 24081/2018 seeking a prayer for equal pay for equal work for the NMR workers and also some allied prayers. The said writ petition was finally decided and a set of directions were given by a Division Bench of this Court vide its order dated 31.01.2019, of course, following two Hon'ble Supreme Court orders and accordingly, as per the imports of the said orders passed by the Division Bench of this Court, the services of the petitioners shall be regularized.

2.3. In this context, it is also the case of the petitioners that, pursuant to the Division Bench order, dated 31.01.2019, the Government issued two Government orders, namely, G.O. Ms. No. 137 Public Works (2) Department dated 13.09.2019 and G.O. Ms. No. 233 Public Works (C2) department dated 06.12.2019 (hereinafter referred to as G.O. Nos. 137 and 233). Accordingly, under G.O. 137, 2406 employees, i.e., NMRs, who were on the roll, whose names have been



identified and recommended by a committee appointed in this regard were identified, as they were working as of now on contract basis and they can be, in a phased manner, regularized on completion of 10 years of service and the pay payable to them shall be revised on par with the pay equal to last grade servants of the Government of Tamil Nadu, as directed by the Division Bench judgment referred to above. Subsequently, by another G.O., ie., G.O.No.233, further 1001 NMR workers were also identified for the said purpose and those 3407 employees totally were sought to be engaged continuously and depending upon the years of engagement in a phased manner, they would be regularized. This is the import of the aforesaid Government Orders, namely, 137 and 233. However, the petitioners, though had been engaged as NMRs/Mazdoor for several years and had been continuously working, their names were not identified or sponsored by the concerned Executive Engineer of PWD or WRD and therefore, these petitioners seek for the first part of the prayer of mandamus to permit the petitioners to continue as NMRs and to pay minimum pay scale as applicable to the basic servants, as per the Division Bench order dated 31.01.2019.

2.4. The petitioners also averred in the affidavit that, lot of irregularities were taken place in identifying the 3407 NMRs/daily rated employees or labours. Therefore, in this regard, a suitable investigation may be ordered to be investigated by the fourth respondent and accordingly, necessary follow up action can be taken, which is the second part of the prayer of the writ petition and that is how, this writ petition has been filed with the aforesaid prayer.

3. On the date of first hearing of this writ petition, on 27.07.2020, this Court, after hearing the learned counsel for the petitioners and perusing the materials placed before this Court on the side of the petitioners, had passed the following interim order:

"It is the grievance of the petitioners in this writ petition that, they have been Nominal Muster Roll employees i.e., NMR employees at the respondent PWD department at various centres from 2013 onwards. According to them, continuously they have been engaged as NMR from 2013.

2.It is the further case of the petitioners that, while that being so, a comprehensive direction was issued in W.P(MD).No.24081 of 2018 dated 31.01.2019 by this Court, where this Court seems to have given certain directions.

3.*Inter alia*, this Court, in the set of directions, had directed the respondent Government to pay the minimum salary payable to the workers like sweepers, temporary and casual employees, to these NMRs, temporary and casual employees and in this regard, various other directions



seems to have also been issued by this Court.

4. As against the said directions issued by this Court in W.P. (MD) No. 24081 of 2018, it seems that appeal was filed by way of SLP before the Hon'ble Supreme Court in SLP (Civil) No. 6421 of 2019, which was also dismissed on 15.03.2019. Thereafter, a review petition (Civil) No. 1160 of 2019 was also filed by the respondents before the Hon'ble Supreme Court and the said review was dismissed on 25.07.2019.

5. Thereafter, on the basis of the input supplied by the department i.e., Engineer-in-Chief, Water Resources Department & Chief Engineer (General), Public Works Department, the Government decided to accept such recommendation, of course, pursuant to the directives issued by this Court as referred to above and accordingly, issued the Government Order in G.O. Ms. No. 137, Public Works (2) Department, dated 13.09.2019. As per the import of the said Government Order, there are 2406 such NMR employees, who had been currently working at the time of issuance of the Government Order, therefore, for all those 2406 such employees, the directives issued by this Court have been implemented and accordingly, a minimum pay of more than 18,000/- per month is being paid to those NMR employees.

6. Thereafter, it seems that a further Government order was also issued by the respondent in G.O. Ms. No. 233, Public Works (C2) Department, dated 06.12.2019, where similar directives were issued as in the line of the earlier Government Order i.e., 137 and this time, the number of NMRs have been increased from 2406 to 3407. Therefore, by issuance of these two Government Orders more than 3400 NMRs are getting the minimum salary as directed by this Court, who are, according to the respondents, have been working as NMRs, casual laborers, temporary employees at various places throughout the State under the respondent Public Works Department.

7. In this context, it is the grievance of the petitioners that, the petitioners though had been continuously in the NMR from 2013, they have not been included in these Government Orders and the benefits conferred under these Government Orders have not been conferred on the petitioners, infact or instead of, the petitioners' services have been dispensed with from the issuance of these two Government Orders.

8. In these contexts, it is the further grievance of the petitioners that, even though the petitioners have been entitled to get the minimum wages or salary as



provided under the Government Orders, of course pursuant to the directives issued by this Court, it is not only such minimum salary has been refused to the petitioners, but also their services have been dispensed with.

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9. However, Mrs. J. Padmavathidevi, learned Special Government Pleader appearing for the respondents would submit that, they have never been engaged directly by the Public Works Department (for brevity 'PWD') and if at all they have been engaged, they could have been engaged only by the contractors of the PWD as their employees or NMRs or casual workers. Therefore, one of the conditions, according to the respondents, to take into the NMR as employees, if they have been continuously working for some time directly under the control of the PWD and therefore, if at all any workers claiming the status of NMR under the PWD, but have been working only under the contractors and not directly under PWD, those cases have not been taken into account by the respondent department.

10. Be that as it may, the facts whether the petitioners had been the NMR employees eligible to get included in the list of beneficiaries given under the two Government Orders or not has to be ascertained only on submission of the relevant records by the respondent.

11. That apart, several allegations have also been made by the petitioners to state that, in violation of the conditions imposed in the Government Orders, some of the persons, who claimed to be NMRs, who are not at all NMRs, have been included in the list.

12. In this context, it is the specific case or specific instance as stated by the petitioners and submitted by the learned counsel appearing for the petitioners that, in some areas more than 10 people belong to one family have been included in the list of NMR as beneficiaries. That apart, some of the NMRs, whose name found in the list as per the Government Orders referred to above have been included in violation of the conditions imposed under the Government Order. In these contexts, illustratively the learned counsel appearing for the petitioners pointed out that, some of the NMRs, who claimed to be the graduate in Engineering, have been included as NMR, whereas the conditions imposed in the Government Orders state that, those who were having the qualification of B.E., or Diploma to hold the post of Technical Assistant as NMR would not be eligible or entitled to get the benefit provided under the Government



13. When that being the position, when the petitioners have the information dated 16.04.2020 issued under Right to Information Act by the Assistant Executive Engineer, PWD, Periakulam, six persons names have been mentioned, where one person by name Vijay is the B.E., qualified person whose name has also been included as if that he joined duty as NMR from 01.10.2015.

14. In this context, it is the case of the petitioners as argued by the learned counsel for the petitioners that, in several such cases, where the ineligible candidates have been included in the list as NMRs, whereas the eligible candidates like the petitioners have been excluded. Therefore, the list is not complete. Hence, the two lists provided under the said Government Orders initially for 2406 persons and subsequently, 3407 persons as beneficiaries to get the minimum salary as NMR have to be examined and reviewed and in this regards, the learned counsel would submit that unless those records are produced before this Court and verified by this Court, to come to the conclusion that whether the orders passed by this Court has been scrupulously followed and implemented or not, a final decision cannot be made.

15. This Court *prima facie* finds some force in the said submissions made by the learned counsel appearing for the petitioners. Therefore, a direction is hereby issued to the respondents to produce the records pertaining to the following by way of typed set of documents:

(i) the total list of 2406 NMRs covered under the G.O. Ms. No. 137, Public Works(2) Department, dated 13.09.2019;

(ii) the 3407 NMRs covered under G.O. Ms. No. 233, Public Works(C2) Department, dated 06.12.2019;

(iii) what are all the criteria adopted or followed by the respondents in allowing these NMRs names as eligible persons to get the benefits under the said two Government Orders;

(iv) whether the petitioners had been continuously in the roll of NMRs from 2013 as claimed by them, if so, what is the details, if not, on what basis the respondents come to the conclusion that these petitioners have not been in the NMR roll but only in the contractor's Role;

(v) In this regard, if at all the respondents' stand is that the petitioners had been only employees of the contractor, on what basis, such conclusion



16. The aforesaid details shall be filed by way of additional typed set of papers with supporting affidavit / counter affidavit during the next hearing.

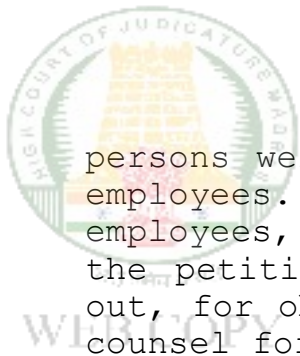
17. For the said purpose, post the matter on 19.08.2020."

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4. In response to the said directives issued by this Court, dated 27.07.2020, on behalf of the respondents 1, 2 and 3, counter affidavit had been filed along with the typed set of papers. Subsequently, in response to the said counter affidavit, the petitioners filed reply/rejoinder, pursuant to which, in order to meet the averments contained in the rejoinder filed by the petitioners, dated 06.09.2020, the respondents 1 to 3 filed counter to rejoinder on 18.09.2020. That apart, on behalf of the respondents 1 to 3, an additional typed set of papers also was filed on 18.09.2020. That is how, the pleadings were completed and accordingly, the writ petition was heard at length on 22.09.2020.

5. Mr. M. Saravanakumar, learned counsel for the petitioners, has submitted that, pursuant to the Division Bench order, initially, the Government issued G.O. No. 137, pursuant to which, the second respondent, vide his proceedings No. S4(1)/53807/2012, dated 16.09.2019, has identified totally 2406 NMR employees and in order to verify the claim of those 2406 NMR employees, based on the certificates, which they made available, a sub committee was constituted consisting of 10 members and the said sub committee must verify the veracity of documents and certificates of those NMR employees to ensure 100% accuracy and file a report to the screening committee consisting of four persons, as directed by the Government for the purpose of continuous engagement as well as permanent absorption at a later date of those NMRs. However, when G.O. No. 137 was issued, based on the identification of the second respondent only in respect of 2406 NMR employees, within a span of three months, yet another G.O. was issued i.e., G.O. No. 233 dated 06.12.2019, where the identification of the NMR employees jumped into 3407 from 2406, whereby, 1001 new NMR employees had been added in the identification. Accordingly, all the 3407 NMR employees were now sought to be continuously engaged, among them, some of them would also be regularized based on their long years of engagement.

6. In this context, it is the submissions of the learned counsel for the petitioners that, several NMR employees, who are, according to the respondents, found place or identified in the list, were not at all NMR employees and they have been identified or included in the list based on bogus certificates produced by them and such kind of bogus claim made by number of employees or persons claimed to be NMR employees for the purpose of inclusion in the list pursuant to the two Government Orders, were not at all properly considered either by the sub committee or by the screening committee. However, based on such bogus claim, hundreds of such



persons were also included, as if they have been identified as NMR employees. He would also contend that, on the contrary, genuine NMR employees, who had been engaged or working for several years, like, the petitioners had been purposely omitted to be included or left out, for obvious reasons. By making these allegations, the learned counsel for the petitioners would rely upon certain instances, which has been pointed out by the petitioners' side in the rejoinder affidavit filed by them. He has relied upon certain averments in the rejoinder affidavit, where specific names have been given. In order to appreciate the same, the relevant portion of the rejoinder affidavit are extracted hereunder:

"7. It is respectfully submitted that the respondents suppressed the material facts and mislead this Hon'ble Court and alleged that all the petitioners were working in the department for a short span of time. It is not true. Since the 2nd petitioner and 19th petitioner were completed 10 years of service in the PWD and the Executive Engineer, Thamirabarani Basin Division recommended the case of the petitioners for regular absorption. The proceeding is enclosed herewith for perusal of this Hon'ble Court. Further the 15th petitioner also worked more than 10 years and for 5 years service certificate issued and for the remaining tenure the respondents refused to issue service certificate. Contrary to their own proceedings the 3rd respondent filed false counter affidavit and mislead this Hon'ble Court and alleged that the petitioners were working short span of time.

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10. If the Vigilance enquiry is ordered by this Hon'ble Court the entire truth will be come into picture and the erring officials also to be identified. Since the 3rd respondent filed the present counter affidavit with an intention to safeguard his subordinates. It is pertinent to note that on petitioners' verification the following persons are secured employment by producing bogus certificate.

Periyar Vaigai Basin Division:

1) Mr. K. Manikandan (Serial No. 41), 2) Mr. P. Singaraj (Serial No. 44) and 3) R. Jayamala (Serial No. 77)

The above said 3 persons were producing bogus certificates in an earlier occasion and the same was identified by the then Superintending Engineer Mr. Rajesh and rejected their claim. Now the very same certificates were approved by the Executive Engineer Mr. Anbuselvam, (Now he is working in Kudaru Basin Division) and secured employment for them.

Further the above said Executive Engineer Mr. Anbuselvam created bogus records in favour of



individuals namely, Mr.Kannan (Serial No.62) Mr.Karthigaikannan (Serial No.103), Mr.Venkatesan (Serial No.119), Mr.Satheeshkumar (Serial No.120) and Mr.Surendar (Serial NO.121) and secured employment for them by obtaining huge bribe amount.

- Since Mr.Karthigai Kannan was working in underground Drainage system in Chinnamanur Municipality for the past so many years.
- Mr.Surendar was working as contract labour in lower camp TNEB in so many years.
- Mr.Venkatesan was a Auto Driver in that locality for the past so many years.
- Mr.K.Kulanthairaja Brother-in-law of Executive Engineer Mr.Subramanian (Serial No.114 in the list)
- Mr.Abdul Sikkandar B.E. Graduate (Serial No.122 in the list) who was worked nearly one month alone.

Manjalar Basin Division

1.K.Kannan Brother of Mr.Sounthar Assistant Executive Engineer (Serial No.27 in the list)

2.Dr.Sudha Lakshmi, D/o.Sundharappan Executive Engineer, (Serial No.51 in the list)

3.K.Ponnusamy Son-in-law of Sundharappan Executive Engineer, (Serial No.52 in the list)

4.Mr.Raja son of a Contractor (Serial No.58 in the list)"

(Emphasis supplied)

7. By relying upon these averments made in the rejoinder affidavit, the learned counsel for the petitioners would contend that, the petitioners were able to bring out these specific instances, where the respondents or the committees appointed by them, have not at all considered or verified properly the supporting documents claimed to have been filed by various individuals, who claimed the status of NMR employees for several years and in this regard, according to the learned counsel for the petitioners, several bogus certificates, which were obtained from several contractors, had been taken into account as documents for the purpose of identifying those persons as NMR employees to be included in the list, without even verifying whether actually the contractors had engaged those persons in the work undertaken by them through the PWD.

8. The learned counsel for the petitioners would specify certain cases, which includes a case called one Sudhalakshmi, D/o.Sundharappan, who is none other than the Executive Engineer of the division concerned and whose daughter Sudhalakshmi also had been recommended by the sub committee as well as screening committee for the purpose of inclusion in the list of NMRs, whereas, the said Sudhalakshmi has never been engaged as NMR employee and merely



because she is the daughter of the Executive Engineer, her name is included. She is a qualified B.E., and therefore, this kind of so many instances could be found out, if the entire list of 3407 NMR employees identified by the respondents are scrutinized, especially, the 1001 NMR employees added between G.O.No.137 and G.O.No.233. Therefore, the learned counsel for the petitioners would vehemently contend that, the issue could be referred to the fourth respondent with a direction to the fourth respondent to have a thorough investigation on the entire gamut of the issue, as to how the list of 3407 NMR employees have been identified, how the list was prepared and whether each of such employees, whose name found in the list of 3407, were the real NMR employees for years together and really on the basis of the supporting documents alone, their names have been included in the list and in this regard, what were all the criteria fixed and adopted by the sub committee to scrutinize those documents and make recommendations to the PWD to include their names. If these aspects are investigated by the fourth respondent, so many shocking revelations would be unearthed. Therefore, the learned counsel for the petitioner would submit that, both first part as well as second part of the prayer of the writ petitioners in this writ petition are justifiable prayers. Therefore, the learned counsel for the petitioners seeks indulgence of this Court to issue a mandamus as prayed for.

9. Per contra, Mr. Vijay Narayan, learned Advocate General appearing for the respondents 1 to 3, has made elaborate submissions on the following aspects:

The learned Advocate General has pointed out that, the very basis of the writ petition as laid by these petitioners, with a prayer sought for therein, is totally misconceived or in this regard, the petitioners attempted to mislead the Court. He would submit that, the legislature of the State brought a legislation called the Tamil Nadu Farmers' Management of Irrigation Systems Act 2000, which is a unique Act available only in the State of Tamil Nadu, under which, 15 river basins in the state of Tamil Nadu had been identified. The main object of the Act is to ensure that, the farmers or Ayacutdars maintain water resources, water canal, water bodies in order to get maximum or optimum level of water source for their irrigation and agricultural activities. He would further submit that, under section 3(1) of the Act, Water Users Association area has to be formed and under Sections 3, 4 and 5 of the Act, what are all the allied functions which have to be undertaken by the Association, have been spelt out. Therefore, under the background of the said legislation (hereinafter called as Irrigation Act), the Government issued a G.O. called G.O.Ms.No.71 Public Works (WRI) Department dated 22.05.2013.

9.1. Under the said G.O., the following orders were passed by the Government:

<https://hcservices.ecourts.gov.in/hcservices/> In this letter fourth read above, the Engineer in



Chief, Water Resources Department, has requested to accord administrative sanction on the following proposals based on the No Objection Certificate given by the World Bank and the approval given by the Empowered Committee in its eleventh meeting held on 14.03.2013.

1) Strengthening of PIM Cell and Four Regional PIM units at Tiruchy, Madurai Coimbatore and Chennai - Rs.1.35 Crore.

2) Cost of WUA capacity building as per alternative model - Rs.19.97 crore.

3) Conducting Training the mobilisation and training Specialists, Social Scientists & Field Organizers by CEC-Rs.0.61 crore.

4) Operating cost for Office Equipments, Telephone with broadband facility, Vehicle for PIM Cell, Chennai and Regional PIM units - Rs.0.11 crore.

5. Accordingly, the Government have decided to accept the proposal of the Engineer in Chief, Water Resources Department, Chennai as recommended by the Empowered Committee and to accord administrative sanction for the following.

(i) Strengthening of PIM cell and Four Regional PIM units at Tiruchy, Madurai Coimbatore and Chennai - Rs.1.35 crore.

(ii) An alternative approach to be adopted in lieu of Support Organisations (SOS) for WUAs capacity Building - Rs.19.97 crore.

(iii) Conducting Training the Mobilisation and Training Specialists, Social Scientists & Field Organizers by CEC-Rs.0.61 crore.

(iv) Operating Cost for office equipments, Telephone with broadband facility, Vehicle for PIM Cell, Chennai and Regional PIM units - Rs.0.11 crore."

9.2. In the annexure to G.O.71, it has also been provided for engaging Mobilisation and Training Specialists and also Field Organizers, funds have also been allotted under various heads for having such training programme and the salary on a consolidated pay basis to be paid to these Mobilisation and Training Specialists (MTS) and Field Organizers (FO). Accordingly, the Government, after conducting the written examinations as well as interview, selected number of persons either as MTS or FO for such engagement, including the petitioners. The said engagement of MTS or FO were made in the Tamilnadu Irrigation Agricultural Mobilisation and Water Bodies Restoration and Management Project, Madurai Region, on contract basis (hereinafter referred to as project). Accordingly, initial engagement has been made in respect of these petitioners in the year 2013 and in order to appreciate such engagement, in respect of one of the petitioner, the engagement order dated 22.07.2013 issued by the Chief Engineer PWD/WRO, Madurai Region, Madurai has been filed



in the typed set of paper, which reads thus:

"We are pleased to engage your services for the position of Field Organiser Tamil Nadu Irrigation Agriculture Modernisation and Water Bodies Restoration and Management Project, Madurai Region, Madurai - 625002 on contract basis.

2. You are posted as Field Organizer in the office of the Executive Engineer, W.R.O. P.W.D. Gundar Basin Division, Madurai.

3. You are requested to join duty immediately on or before 05.08.2013. You would report for duty to the Executive Engineer, W.R.O. P.W.D. Gundar Basin Division, Madurai.

4. This assignment is offered to you on a contract basis for a period of Two months on trial basis from the date of joining. If your services are satisfactory during the trial period, you will be allowed to continue in this office up to 31.08.2014."

9.3. The learned Advocate General would further submit that, pursuant to such engagement, a contract agreement also had been entered into between PWD and the employees and in respect of number of petitioners herein, such agreement of contract executed at various point of time between 2013 and 2015 have been filed as voluminous documents in the typed set of papers consisting of nearly about 180 pages.

9.4. For example in respect of first petitioner, namely, P. Pandiaraja, an agreement was entered into on 02.08.2013 and the same has been time and again renewed and every time, fresh agreement was entered into, viz., on 28.04.2014, 1st September 2014 and 06.04.2015. By relying upon these agreements, the learned Advocate General would contend that, illustratively insofar as the first petitioner is concerned, from 2013 to 2015, he had been engaged as MTS with a consolidated salary of Rs.30,000/- per month and at least such engagement as per the agreement dated 6th April 2015 was over by 30.06.2015. In order to appreciate the same, the relevant portion of the agreement dated 06.04.2015 is extracted hereunder:

"AGREEMENT OF CONTRACT APPOINTMENT

This agreement is made on this 6th day of April 2015, between the Executive Engineer, WRD, Gundar Basin Division, Madurai 2.

AND

Thiru. P. Pandiaraja, S/o. M. Pitchai aged about 31 years and residing at 38, Pandhalkudi 4th street, Sellur
whereas

you have been engaged for the period 7.10.2014 to 31.3.2015 for TN IAMWARM Project, Participatory Irrigation Management Activities (PIM), for appointment as



Specialist in TN IAMWARM Project, Ramanathapuram District.
Now your services (as Mobilisation Training
Specialist on contract basis) is extended from 06.04.2015
to 30.06.2015)

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4. The Executive Engineer, WRD, Gundar Basin Division, Madurai during the continuance of your service would pay a sum of Rs.30,000/- (Rupees thirty thousand only) per month. From this amount, necessary statutory deduction like Income Tax, Professional Tax, etc., will be done at source."

Similar agreements of contract were also entered into between the department and the petitioners between 2013 and 2015.

9.5. Relying upon these agreements, the learned Advocate General would contend that, beyond 2015, no such contract had been entered into, which means, none of these petitioners had been engaged or their engagement has been continued beyond the year 2015. Therefore, the learned Advocate General would contend that, after 2015, absolutely, there had been no relationship whatsoever between the department and these petitioners and if at all, the contractual relationship had been there between the department and the petitioners, that was over by 2015. Thereafter, none of these petitioners had been engaged even as MTS or FO. Therefore, the tall claim made by these petitioners in this writ petition that, they had been continuously engaged as NMR employees till date is bereft of facts and absolutely a false statement.

9.6. The learned Advocate General would also contend that, the aforesaid documents would clearly establish that, the engagement of these petitioners either as MTS or as FO are only for a separate purpose to train or to instruct or to give training to the farmers or agriculturists in the micro management irrigation system from various sources of the department and it is a project sponsored by the World Bank and only for the purpose of this project alone, as a temporary engagement, that too on contractual basis, these petitioners were engaged in the method explained above and after getting trained at Trichy institute under the aegis of PWD, they were pressed into service at various Basins only as trainers to train the agriculturists or farmers and after the project is over, their engagement, which was time and again renewed from 2013 to 2015, has come to an end in the year 2015 itself and thereafter, they have never been engaged. Therefore, the question of considering them as NMR employees and also considering them as employees continuously working till date for the purpose of preparing or identifying the list of NMR employees for continuous engagement or later engagement does not arise, he contended.

<https://hcservices.courts.gov.in/hcservices/> 9.7. The learned Advocate General, though accepted that, out of



the 20 petitioners, petitioners 2, 15 and 19 were originally engaged as NMR employees, however, contended that, at one point of time, they left the NMR employment and they have never been employed or continuously engaged as NMR employees, but in respect of others, out of 20 petitioners, they had never been engaged even as NMR employees at any point of time, except as engagement either as MTS or FO as stated above. Therefore, the learned Advocate General would contend that, the petitioners are no way connected with the process of identifying the NMR employees, who are on the roll for the purpose of preparing the list for keeping them in continuous engagement and also for future regularization on completion of ten years of service and more. As these petitioners are no way connected with the said process, the question of adding/including these petitioners into NMR employees list as envisaged under G.O.137 and 233, does not arise. Therefore, the prayer sought for in the writ petition is totally misconceived and hence, it cannot be countenanced, he contended.

9.8. In respect of the second part of the prayer, making so many allegations against the PWD in preparing or identifying or finalizing the list of 3407 NMR employees for the purpose of continuous engagement and for later absorption as provided under G.O.137 and 233, is concerned, the learned Advocate General has relied upon the counter affidavit filed by the respondents in respect of rejoinder filed by the petitioners.

9.9. The learned Advocate General in this context would contend that, initially 2406 NMR employees were approximately identified and the said figure were arrived on the basis of critical date as 30.06.2017. However, the cut off date for payment of wages, since has been taken as 14.11.2019, subsequently, as per the report of the screening committee constituted, the figure has been increased from 2406 to 3407, since the increase in number is due to the change of cut off date from 30.06.2017 to 14.11.2019, ie., the date of screening committee's report. In respect of some specific names, which are mentioned by the petitioners in the rejoinder affidavit to state that, some of them are either close relatives or blood relatives of Executive Engineers concerned and some of them never have been engaged as NMR employees or they had been working elsewhere and despite that they had also been included in the list of NMRs and such an allegations by giving names mentioned in Paragraph 10 of the rejoinder affidavit, as has been quoted above, the learned Advocate General would contend, by relying upon the counter filed by the respondents that, those people either had been engaged both as NMR and on contract basis or only on contract basis and in order to explain the same, the learned Advocate General relied upon Paragraph 22 and the table given therein in the counter affidavit dated 18.09.2020, which are noted hereunder:

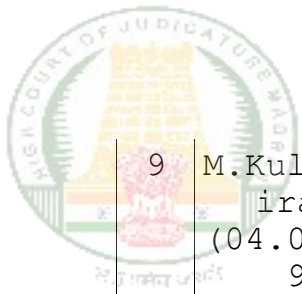
"22. It is submitted that the name of the persons referred to by the petitioner in Para 10 of the Rejoinder



and as detailed below have all been included in the list of 3407 NMRs/daily rated casual labours/Temporary workers on the basis of the verification of records submitted by the respective Executive Engineers.

TABLE - A

Sl. No.	Name/Thiruvargal	Sl. No. In the list 3407 NMRs	Division in which engaged	Period of engagement	Remarks
1	K. Manikandan (05.03.1970)	41	Periyar Vaigai Basin Division, Madurai	From 1994 onwards	Engaged both on NMR and contract basis
2	P. Singaraj (17.06.1980)	44	Periyar Vaigai Basin Division, Madurai	From 1998 onwards	Engaged both on NMR and contract basis
3	R. Jayamala (17.05.1980)	77	Periyar Vaigai Basin Division, Madurai	From 2003 onwards	Engaged both on NMR and contract basis
4	D. Kannan (01.06.1980)	62	Periyar Vaigai Basin Division, Madurai	From 2003 onwards	Engaged both on NMR and contract basis
5	P. Karthiga i Kannan (25.05.1997)	103	Periyar Vaigai Basin Division, Madurai	From 2003 onwards	Engaged both on NMR and contract basis
6	P. Venkatesan (25.05.1983)	119	Periyar Vaigai Basin Division, Madurai	From 2013 onwards	Engaged on contract basis
7	M. Satheesh kumar (22.05.1987)	120	Periyar Vaigai Basin Division, Madurai	From 2013 onwards	Engaged on contract basis
8	C. Surendhar (10.06.1988)	121	Periyar Vaigai Basin Division, Madurai	From 2013 onwards	Engaged on contract basis



9	M.Kulanthiraja (04.06.1979)	114	Periyar Vaigai Basin Division, Madurai	From 2010 onwards	Engaged on contract basis
10	S.Abdul Sikkandar (20.08.1994)	122	Periyar Vaigai Basin Division, Madurai	From 2016 onwards	Engaged on contract basis
11	K.Kannan (18.04.1984)	27	Manjalaru Basin Division, Peri yakulam	From 2009 onwards	Engaged on contract basis
12	S.Sudhalakshmi (22.12.1987)	51	Manjalaru Basin Division, Peri yakulam	From 2016 onwards	Engaged on contract basis
13	K.Ponnusamy (27.05.1975)	52	Manjalaru Basin Division, Peri yakulam	From 2015 onwards	Engaged on contract basis
14	T.Raja (06.05.1982)	58	Manjalaru Basin Division, Peri yakulam	From 2016 onwards	Engaged on contract basis

9.10. The learned Advocate General has also contended that, as Annexure A to G.O.Ms.No.218 Public Works (WR1) Department dated 27.11.2019, the role and responsibilities of Mobilisation and Training Specialists and Field Organizers have been clearly demarcated and if we look at the role of these category of people, their function and duty is entirely different, which cannot be equated with the NMR employees being engaged mainly by the Building Division as well as Water Resource Division of PWD.

9.11. The learned Advocate General would also contend that, as per the Annexure D to G.O.218, monthly hiring charge of a FO is consolidated pay of Rs.8,000/- and in case of MTS, it is Rs.30,000/-. This sum of Rs.30,000/- is far higher than the NMR employees' salary or wages, which would be calculated only on daily basis. Until the Division Bench judgment referred to above, is made, pursuant to which G.O.Nos.137 and 233 are issued, the salary of the NMR employees were very minimal between Rs.8,000/- to Rs.11,000/- depending upon the category, that too, would be calculated only on daily rated basis through the Contractor and the said system is now been abolished and all the NMRs are directly engaged now through the PWD and their salary also has been increased on par with the basic servants salary, as directed by this Court and the salaries also directly credited in the bank account of each of the NMR employees



and the payment through Contractor or middle man has been completely scrapped. Therefore, the learned Advocate General would submit that, these petitioners, who had either been engaged as MTS or Field Organizers on a consolidated pay of Rs.30,000/- or 8,000/- per month, no way can be compared with the NMR employees, who are daily rated wagers and therefore, the status of NMR employees cannot be claimed by these petitioners, therefore, the prayer sought for in the writ petition is completely misconceived, hence, the learned Advocate General seeks dismissal of this writ petition.

10. I have considered the rival submissions made by the learned counsel for the petitioners as well as the learned Advocate General for the respondents 1 to 3 and have perused the materials placed before this Court.

11. First let me consider, whether the first part of the prayer sought for by the petitioners to the extent that, they are entitled to be continuously engaged as NMRs, pursuant to G.O.Nos.137 and 233 and shall be paid the minimum wages as directed by this Court by the Division Bench order referred to above and also be entitled for keeping absorbed as NMR employees in the PWD, can be accepted or not. In order to find out the solution to the first part of the prayer, the contention of the petitioners, as averred in the affidavit as well as from the arguments advanced by the learned counsel for the petitioners, that, these petitioners had been engaged as NMR employees for quite long time and they had been continuously working as NMR employees even till date and in this regard for the past two years, work is being extracted by the respondents from these petitioners, of course, without paying the wages, has to be verified first. Therefore, according to the petitioners, they are entitled to be considered for continuous engagement, for the said purpose, their names also can be included in the list of the 2406 or 3407 NMR employees, who were identified for the continuous engagement as NMR employees and also for a subsequent regularisation based on their length of service.

12. Whether the said plea raised by the petitioners on the basis of the facts and records produced by both sides, can be accepted or not is a question to be answered. In this regard, on the side of the petitioners, typed set of documents have been filed. In the additional typed set of papers, insofar as the 15th petitioner Muniyandi is concerned, under RTI Act, some particulars have been given by the Executive Engineer on 14.07.2010, which discloses that, the said 15th petitioner had been engaged as NMR employee from 01.05.1996 and had been continuously engaged up to 2001. This was the certificate issued on 14.07.2010.

13. Like that, in respect of petitioner Nos.2 and 19 are concerned, the Assistant Executive Engineer Manimutharu Dam Sub Division and Executive Engineer, Water Resources Department, PWD,



Tamiraparani Division, Tirunelveli, jointly given service particulars/service certificate. In the said certificate, the heading itself shows that, those daily wagers, ie., NMRs have completed 10 years of engagement. It further discloses that, the second petitioner joined on 01.06.2000 and the 19th petitioner joined on 01.04.2000. The said certificate was issued on 14.09.2011, wherein, the following particulars also have been provided:

1. இப்படியில் குறிப்பிடப்பட்டுள்ள தினக்கூலிப் பணியாளர்கள் வேலை வாய்ப்பகம் மூலம் தேர்ந்தெடுக்கப்படவில்லை. தேவைக்கேற்ப பணிகள் வழங்கப்பட்டது.
2. எனவே அட்காக் விதி 3(1)யை தளர்த்தி அரசின் ஆணை பெற்றிட வேண்டும்.
3. இப்படியில் குறிப்பிடப்பட்டுள்ள தினக்கூலிப் பணியாளர்கள் அனைவரும் 2002ம் ஆண்டிற்கு முன்பிருந்தே தினக்கூலிப் பணியாளராக பணிபுரிந்து வருகிறார்கள் என சான்று வழங்கப்படுகிறது.
4. இப்படியில் குறிப்பிடப்பட்டுள்ள பணியாளர்கள் அனைவரும் ஒப்பந்த அடிப்படையில் ஒப்பந்த தொழிலாளர்களாக இத்துறையில் தற்போதும் தொடர்ந்து பணிபுரிந்து வருகிறார்கள் என சான்று வழங்கப்படுகிறது.
5. 31.11.2008 முடிய 10 வருட பணிமுடித்த தினக்கூலிப் பணியாளர்கள் அனைவரது பெயர்களும் இக்கருத்துருவில் கொண்டு வரப்பட்டுள்ளது. மேலும் அனுப்பி வைக்கப்பட வேண்டிய கருத்துரு மீதும் ஏதுமில்லை என உறுதி வழங்கப்படுகிறது.

14. The aforesaid certificate issued by the PWD officials, of course, which was in the year 2011, undisputedly has disclosed that, the petitioner Nos.2 and 19 had been continuously working for more than 10 years, which has also been certified that, at the time of giving the certificates, they had also been continuously working. From the aforesaid documents filed on behalf of the petitioners, this Court can prima facie come to the conclusion that, insofar as the petitioner Nos.2 and 19 are concerned, they had been working as NMRs from 2000 onwards and beyond 10 years, they had been continuously working and to that effect, certificate had been given by the concerned Executive Engineers of PWD. They might have subsequently been engaged either as MTS or FO, as submitted by the Government side and such engagement could have been completed at the end of the contract sometime in 2015, but the fact remains that, they had been working for more than 10 years continuously as NMR employees.

15. Insofar as the petitioner No.15 is concerned, the particulars provided by the concerned Executive Engineer under RTI Act dated 14.07.2010 also discloses that, he had been engaged as NMR employee from 01.05.1996 up to 30.05.2001, therefore, continuously for five years.

16. Except for these three petitioners, out of the total 20 petitioners, on the petitioners' side, no documents have been filed by the petitioners to establish, even for a prima facie case that, they had been continuously engaged or were working as NMR employees for quite long time, as they claimed in this writ petition, through their affidavit, except their engagement as MTS or FO.

17. Insofar as the engagement as MTS or FO is concerned, the learned Advocate General has clarified the position unambiguously



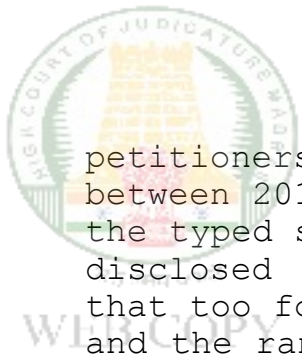
that, pursuant to the Act, namely, the Irrigation Act, Government issued G.O.Ms.No.71, where, under a project, of course, under the aegis of World Bank with its assistance, where for the purpose of training the agriculturists/farmers, especially in the context of minor irrigation for agricultural purpose and also to maintain the water sources, these people, like, the petitioners had been engaged on contract basis, of course, as MTS or FO with fixed consolidated pay of Rs.30,000/- and Rs.8,000/- respectively per mensem. For such contractual engagement, these people were trained by the training institute to that effect run by the PWD at Trichy and after completing the training, they had been continuously engaged by entering into a contract with them and the said contract also has been time and again extended by written express contract and last such contract, as has been projected by the respondents in respect of these petitioners, were over by 2015 itself. Thereafter, there was no such contract between these petitioners and the respondents PWD.

18. This stand of the respondents that, after 2015, the petitioners never have been engaged either as MTS or FO, has not been disputed by the learned counsel for the petitioners. However, both in the averments made in the affidavit as well as at the time of oral arguments advanced by the learned counsel, they built up the case, as if they had been continuously engaged, if not NMR employees but atleast as MTS or FO till date and in this regard they claimed also that, for the past two years, the respondents PWD have extracted work from them without paying the salary. However, absolutely there has been no proof whatsoever from the side of the petitioners to establish their case that beyond 2015, they had been continuously engaged.

19. Assuming that they had been engaged some time between 2013 and 2015, of course, on contractual basis, whether that would entail them to claim continuity of such engagement is other question.

20. In this regard, the learned Advocate General has made it very clear that, the job of the petitioners in the category of MTS or FO are no way connected with the job of the NMR employees, who are engaged for various purposes, especially in the building sector and also in some other water sources sector. The main purpose of engagement of these petitioners as MTS and FO is only for the purpose of training the agriculturists and this was the only object of the project envisaged by the Government, of course, on the aegis of the World Bank through its assistance and once the task is over, ie., the project work is over, they have been disengaged or their contractual engagement has come to an end by 2015.

21. In this context, this Court has no hesitation to accept the said stand of the respondents that, these petitioners have never been engaged beyond 2015, because the original contract between the



petitioners and the respondents were extended from time to time between 2013 and 2015 only and a copy of the same have been filed in the typed set of papers by the respondents. On perusal, it has been disclosed that, their job and engagement was purely contractual, that too for few months and subsequently the same had come to an end and the range of period of such contract is between 8 to 29 months. Therefore, there is absolutely no substance in the said stand or arguments taken on the side of the petitioners that, they had been continuously engaged as NMR employees till date. Therefore, pursuant to the import of G.O. Nos. 137 as well as 233, they are entitled to be continuously engaged as NMR employees and for the purpose, they have to be included in the list of NMR employees, either under G.O. 137 for 2406 employees or under G.O. 233 for 3407 employees, cannot be accepted. Therefore, the said plea raised on behalf of the petitioners is liable to be rejected.

22. However, insofar as the petitioner Nos. 2 and 19 are concerned, they had been engaged for more than 10 years and at one point of time, since the PWD has switched over to the pattern of engaging NMR employees through Contractors the payment has been made only through the Contractors and no record has been kept by the PWD department for such engagement of NMR employees and even in the case of hundreds of NMR employees said to have been included in the list of beneficiaries for getting equal pay are only on the basis of the letters or certification given by the private contractors. Therefore, this Court feels that, the case of these two petitioners, namely, Nos. 2 and 19 are certainly in higher pedestal or their case is better than the case of hundreds of people. Therefore, this Court feels that the claim of the petitioner Nos. 2 and 19 can very well be considered by the respondents, of course, on the basis of the available records.

23. Like that, in respect of petitioner No. 15 also, at least for five years engagement directly by PWD, documents are available. Therefore, this case also can be considered by the respondents, based on the available records for inclusion in the list of beneficiaries for getting continuous engagement and minimum wage.

24. Insofar as the second part of the prayer that, allegedly there has been lot of irregularities in identifying or finalizing the list of NMR beneficiaries for the purpose of continuous engagement, equal pay and also for later absorption on completion of 10 years period, for that, a thorough probe has to be made or investigation has to be conducted by the fourth respondent is concerned, this Court feels that, whether such a plea, at least to the prima facie satisfaction of this Court, has been established by the petitioners, has to be looked into.

25. In this context, let me take the set of directions issued by the Hon'ble Division bench in W.P(MD) No. 24081/2018 dated 31.01.2019 in the matter of R. Rajaselvan v. the State of Tamil Nadu



and others.

26. In the said judgment, ultimately, the Hon'ble Division Bench has given the following summary directions, which are usefully extracted hereunder:

SUMMARY OF DIRECTIONS:

28. We issue the following directions:

(1) We direct the State of Tamil Nadu to follow strictly the law laid down by the Hon'ble Supreme Court in **State of Punjab and others vs. Jagjit Singh and Others [2017(1) SCC 148]** and **Sabha Shanker Dube vs. Divisional Forest Officer and others [2018(14) Scale 765]** that daily wage employees, casual and contract employees are entitled to draw wages at the minimum of the pay scales, which are applicable to the similarly placed regular employees.

(2) In order to comply with the law laid down by the Hon'ble Supreme Court by upholding the principle 'equal pay for equal work',

(a) We direct the Public Works Department to pay wages to the NMRs, daily wage employees, temporary employees and casual workers at the minimum of the pay scale, which are applicable to the regular employees holding the same post across the State.

(b) The Public Works Department is directed to pay the salary of sweepers employed by the High Court and the State viz., Rs.18,843/- to the NMRs both civil and electrical including radio section/wing across the State with effect from 01 February, 2019. In short, the NMRs, daily rated, casual and temporary workers across the State must be paid Rs.18,843/- per month as wages, which is the present salary of a sweeper/scavenger in the State Government service and the High Court service.

(c) We direct the first respondent to issue a Government order on or before 22 February, 2019 sanctioning the minimum scale of pay to the NMRs irrespective of classification, daily wage employees and casual workers across the State, which should be the pay scale of the sweeper/scavenger in Government/High Court service.

(d) We direct the fourth respondent to issue a Government Order prescribing the wage structure of



temporary/casual/daily wage employees of all the Corporations, Municipalities and Panchayats across the State, taking into account the pay scale of regular employees under the respective Local Body, by 22 February, 2019.

(e) We direct the State to dispense with the present practice of engaging NMRs through Contractors. The Public Works Department must maintain a register containing the names of NMR, casual, temporary and daily wage employees.

(f) The salary shall be credited by RTGS/ECS in the respective account of the NMR/casual/temporary/daily wage employees.

(g) The Government must introduce Bio-metric system for recording the attendance of NMRs and other daily rated/temporary workers across the State as expeditiously as possible. Insofar as the High Court Bench at Madurai is concerned, Bio-metric system shall be introduced with effect from 01 April, 2019.

(h) We direct the State to establish a full-fledged 24x7 dispensary/hospital inside the Campus of the High Court Bench at Madurai. The building for the Hospital should be constructed in such a way that even the local people must be in a position to avail the medical facilities from the said hospital. We direct the respondent No.15 to pass appropriate orders in the matter on or before 22 February, 2019.

(i) We direct the State to establish a separate wing for the maintenance of the High Court Bench at Madurai under an Executive Engineer, whose office must be constructed and located inside the Campus.

(j) We direct the Engineer-in-Chief, Public Works Department, to approve the proposal dated 14 December, 2018 submitted by the Public Works Department, Madurai, for changing the head of account as "Judges Bungalow wages" on or before 22 February, 2019."

27. Pursuant to the said directions issued by the Division Bench of this Court, the second respondent vide letter No.S4(1)/38327/2012 dated 04.07.2019 has written to the Government stating that, the orders passed by the Hon'ble Division Bench of this Court, shall be, applicable to the NMRs, daily rated casual and temporary



workers approximately numbering 2406 only, and after preparation of consolidated list that shall be finalised by the officials of the screening committee.

28. It has also been stated in the said letter by the second respondent that, no new NMR will be engaged in future in PWD under NMR roll in PWD except at the campus/sites indicated in Paragraph 7 supra.

29. Paragraph 7 supra reads thus:

"7. However, to begin with the NMR's, daily rated casual and temporary workers engaged in the private and official residences of the VVIP's as detailed below under the Tamilnadu Payment of Salaries Act, 1951 and the NMR's, daily rated casual and temporary workers engaged in the High Court Judicial campus both at Chennai and Madurai be paid an amount of wages equivalent to Basic pay at the minimum of the pay scale applicable to the post of Sweeper/Scavenger with Dearness allowance thereupon as applicable from time to time, through RTGS/ECS as ordered by the Hon'ble High Court of Madras as explained in Para 1 supra, since the authentication of the credentials of the NMR's working in the following campus/sites, are already being done by the VVIP's concerned.

(i) The NMR's, daily rated casual and temporary workers engaged in the official and private residences of the Hon'ble Judges of the Madras High Court.

(ii) The NMR's, daily rated casual and temporary workers engaged in the official residence of the Hon'ble Chief Minister of Tamilnadu.

(iii) The NMR's, daily rated casual and temporary workers engaged in the official and private residences of the Hon'ble Ministers of Government of Tamilnadu.

(iv) The NMR's, daily rated casual and temporary workers engaged in the official residences of the Hon'ble Speaker and Deputy Speaker of the Tamilnadu Legislative Assembly, Chief Whip and other dignitaries in the Government Bungalow at Raja Annamalaipuram, Chennai 600 028."

30. Pursuant to the said letter of the second respondent, having considered the same, the Government has issued G.O. Ms. No. 137 Public Works Department dated 30.09.2019, where, having accepted the second respondent's request, the Government has passed the following order:

"6. The Government, after careful examination, in order to comply with the orders of the Hon'ble Madurai Bench of Madras High Court, dated 31.01.2019, in W.P. (MD) No. 24081 of 2018, have decided to accept the proposal of the Engineer-in-Chief, Water Resources Department and



Chief Engineer (General), Public Works Department, as a special case. Accordingly, the Government hereby direct as follows:

1. An amount of wages equivalent to Basic pay at the minimum of the pay scale applicable to the post of Sweeper/Scavenger with Dearness Allowance thereupon as applicable from time to time, be paid to the NMRs, daily rated casual and temporary workers engaged in Public Works Department in the following places:-

a) In the official and private residences of the Hon'ble Judges of the Madras High Court both at Chennai and Madurai.

b) In the official residences of the Hon'ble Chief Minister of Tamilnadu.

c) In the official and private residences of the Hon'ble Ministers of Government of Tamilnadu.

d) In the official residences of the Hon'ble Speaker and Deputy Speaker of the Tamil Nadu Legislative Assembly, Chief Whip and other dignitaries in the Government Bungalows at Raja Annamalaipuram, Chennai 600028.

(ii) Regarding the remaining Nominal Muster Rolls, daily rated casual and temporary workers engaged at the campus/sites other than those mentioned in item (I) above, a screening committee is constituted to authenticate and verify the credentials of these Nominal Muster Rolls for payment of wages equivalent to Basic pay at the minimum of pay scale applicable to the post of Sweeper/Scavenger with Dearness allowance thereupon as applicable from time to time. The screening committee shall comprise of the following officials:-

a) Special Secretary to Government (PK), Finance Department, Government of Tamilnadu, Fort. St. George, Chennai. In case special Secretary (PD) is unable to attend any specific meeting, Deputy Secretary (MA), Finance Department is the alternate nominee.

b) The Engineer-in-Chief, Water Resources Department and Chief Engineer, (General), Public Works Department, Chennai.

c) The Engineer-in-Chief, (Buildings) and Chief Engineer (Buildings) Chennai Region, Public Works Department, Chennai.

d) The Joint Chief Engineer (Buildings), Public works Department, Chennai.

(iii) For the Nominal Muster Rolls, daily rated casual and temporary workers engaged at the campus/sites other than those mentioned in item (1) above, the wages



equivalent to basic pay at the minimum of the pay scale applicable to the post of Sweeper/Scavenger with Dearness allowance thereupon as applicable from time to time, be paid after verification of the credentials of these workers approved by this screening committee and the process of such payment of wages in this regard may be initiated on receipt of the final report from the screening committee.

(iv) The payment of Wages equivalent to Basic pay at the minimum of the pay scale applicable to the post of Sweeper/Scavenger with Dearness allowance thereupon as applicable from time to time, shall be applicable to the Nominal Muster Rolls, daily rated casual and temporary workers approximately numbering 2406 only, after preparation of a consolidated list that may be finalized by the officials of the Screening committee except those engaged in the campus/site mentioned in item (1) above.

(v) The names of those Nominal Muster Rolls, daily rated casual and temporary workers who expire, abandon duty/not reported for duty, appointed, absorbed/regularized in Government service and during other uncertain contingencies shall be removed/deleted from the consolidated list estimated at 2406 numbers.

(vi) The payment of Wages ordered by the Hon'ble High Court equivalent to basic pay at the minimum of the pay scale applicable to the post of Sweeper/Scavenger with Dearness Allowance thereupon as applicable from time to time, shall be continued to be in existence only in respect of the campus/sites mentioned in item (1) above and shall be vanished as and when Nominal Muster Rolls engaged at the campus/sites other than those mentioned in item (1) above, are removed/deleted from the list after approved by the Screening Committee.

(vii) The above said orders shall not be applicable to those Nominal Muster Rolls, who are engaged in the category of Technical Assistant, possessing B.E./Diploma qualification, both in Civil and Electrical.

(viii) The Engineer-in-Chief, water resources Department & Chief Engineer (General), Public Works Department is strictly instructed that no new persons shall be engaged in future in Public Works Department under Nominal Muster Roll, except at the campus/sites indicated in item (1) above.



Department vide its U.O. No. 4445/PWII/2019, dated
12.09.2019.

(BY ORDER OF THE GOVERNOR)

K. MANIVASAN

PRINCIPAL SECRETARY TO GOVERNMENT

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31. Accordingly, it seems that, the screening committee was appointed, and a Sub Committee consisting of 10 persons were also appointed. Before the said committee, the eligible NMRs list seems to have been sent by various Executive Engineers with necessary certificates and after scrutinizing the same, it seems that, the sub committee had given a report to the screening committee, who, in turn, having verified the same, has entrusted the job to the second respondent to write to the Government to accept the report of the screening committee. Accordingly, a suitable revised order seems to have been sought for from the Government.

32. This position is reflected in the subsequent letter of the second respondent dated 15.11.2019 in letter No. S4(1)/38327/2012. Among other things, for the purpose of the present issue, we can take the following portions from the said letter of the second respondent dated 15.11.2019:

"6. In the G.O., cited, the total numbers of NMR's and daily rated casual labours and temporary workers engaged under service contract basis is mentioned approximately 2406 nos. which is arrived based on the critical date as 30.06.2017. Now the cutoff date for payment of wages has been taken as 14.11.2019 as per the report of the Screening Committee constituted in G.O., 2nd cited. Accordingly, the total NMR's and daily rated casual labours engaged under service contract basis are utilized in various works sites of this department works out to 3407 nos. The reason for increase in numbers is due to the change of cut off date from 30.06.2017 to 14.11.2019 (Screening Committee Report date)

7. If the earlier crucial date of 30.06.2017 is adopted, the prospects will be prejudiced and curtailed for the remaining NMR's and daily rated casual labours and temporary workers engaged under service contract basis those who eligible for payment of wages as per Hon'ble High Court Order and G.O. 2nd cited i.e., in between earlier crucial date of 30.06.2017 to now proposed date of 14.11.2019 (Screening Committee report)."

33. Accepting the said letter of the second respondent dated 15.11.2019, the Government issued G.O. 233 Public Works (C2) Department dated 06.12.2019, where the Government has made the following:

<https://hcservices.ecourts.gov.in/hcservices/> The Government, after careful examination of the



above proposal of the Engineer-in-Chief, Water Resources Department and Chief Engineer (General), Public Works Department, have decided to accept the same. Accordingly, in continuation of the G.O., 3rd read above, the Government hereby accord concurrence for payment of wages to 3407 numbers of NMRs/daily rated casual labours and temporary workers, as finalized by the Screening Committee, equivalent to basic pay at the minimum of pay scale applicable to the post of Sweeper/Scavenger with Dearness Allowance thereupon applicable from time to time, subject to the other conditions stipulated therein in the G.O., 3rd read above."

34. That is how, now, the 3407 numbers of NMRs/daily rated casual labourers and temporary workers as finalized by the screening committee are entitled to get equivalent basic pay as the minimum pay scale applicable to the post of Sweepers/scavengers with dearness allowance.

35. Only in this context, it is the allegation of the petitioners that, based on the available records, the respondents department found only 2406 NMR, daily rated casual labourers for the purpose of equal pay and for continuous engagement. This has been also specifically mentioned at the letter of the second respondent dated 04.07.2019 with the words that, "approximately numbering 2406 only". However, this 2406 has suddenly become 3407, ie., 1001 more number of alleged NMR employees added in the letter dated 15.11.2019 of the very same second respondent, which has also been accepted by the Government through G.O.No.233.

36. In this context, in the rejoinder affidavit filed by the petitioners, in Paragraph 10, which has already been extracted, the petitioners have pointed out some specific instances and made such allegations. In response to the said allegations, in the counter affidavit filed by the respondents, at Paragraph 22, a table has been given. In the said table, 14 persons name have been given. Out of the 14, five persons claimed to have been engaged by the PWD as NMR and also on contract basis. Remaining 9 persons claimed to have been engaged only on contract basis.

37. Some of the candidates had been engaged, according to the respondents, only from the year 2015 and 2016.

38. In this context, the allegation of the petitioners is that, atleast four candidates out of 98 sponsored from Manjalaru Basin Division, are the close relatives of the Executive Engineers concerned or the relatives of the PWD Contractors, for which, reply has been given in the counter affidavit at Paragraph 22 of the respondents, where they admitted that, they are the relatives of the Executive Engineers and Contractors, but the defence was that, the



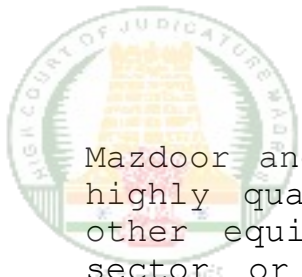
four persons may be related by coincidence, however, four were engaged in PWD for a period of four years.

39. Another important allegation made by the petitioners' side is that, the candidate by name Sudhalakshmi, D/o. Sundharappan, who is an Executive Engineer of PWD, whose name also has been sponsored and has been included in the list. Since the allegations is pinpointed against a particular candidate, who is none other than the daughter of one of the Executive Engineer of the PWD, this Court, on the date of conclusion of argument, directed the learned Advocate General to produce randomly 11 persons service particulars, which were considered by the sub committee as well as by the screening committee, including the service particulars of the said candidate, namely, Sudhalakshmi. Pursuant to the said directives, the service particulars of the 11 candidates have been circulated, where, in respect of the said Sudhalakshmi, according to the particulars available, she is a B.E., graduate in Computer Science. Whether she had been directly engaged by the PWD as NMR, the answer is that, she had been engaged only through a Contractor and according to the engagement certificate given by one private contractor of Dindigul, she worked between 2015 and 2018 for a total period of 430 days. In fact, for the period of 2015, such an engagement certificate was given by one Mohammed Yunus Saleem, a PWD Contractor from Dindigul and for the years 2016, 2017 and 2018, certificates were issued by one S. Ganesan, a PWD Contractor from Pallapatti. Except these engagement certificates given by the individual private PWD Contractors, no other records or documents available in respect of the said candidate. That apart, in G.O. No. 137, in clause VII, it has been made clear that, the orders shall not be applicable to those Nominal Muster Rolls, who are engaged in the category of Technical Assistants, possessing B.E./Diploma qualification, both in Civil and Electrical.

40. This has been interpreted by the respondents stating that, those who are qualified with B.E., or Diploma in Civil and Electrical and holding the post of Technical Assistant alone would not be entitled to be considered for NMR engagement, however, if the Engineering Degree holder and Diploma holder, who has been engaged on contract basis can be considered as an NMR employee and accordingly, the benefits of G.O. 137 would be applicable.

41. The said defence taken by the respondents by giving such an interpretation to the G.O., is not appealing to this Court.

42. Since the NMR employment itself is against the recruitment rules concerned and such an engagement is made purely on temporary basis, that too, on daily wages basis, only to meet out the contingency arisen then and there in the department concerned. The nature of the job being entrusted to this NMR employees are normally



Mazdoor and so on. If these kind of NMR work being entrusted to highly qualified persons with the qualification of B.E., or any other equivalent degree that would create a vacuum in a larger sector or larger section of people, who are having a minimum qualification, like +2, 10th standard or even less than that, in getting a job for their livelihood.

43. Though there is no express provision prohibiting for engaging a highly qualified person in NMR job or as a NMR employee for doing the menial or last grade service, such kind of engagement cannot be encouraged by the Government being the model employer, because, the job is made for the less qualified persons. However, it seems, since the NMR engagement is not controlled by any set of Rules, hitherto it seems to have been handled by making engagement to those, who come and knock the door, which means, if you knock the door, it will be provided to you. In between this, what are all the criteria being adopted, what are all the norms are followed, what are all the procedure being adopted, are either not been clearly demarcated or even if any such norms are available, the same seems to have not been followed in stricto sensu. The case of the said candidate Sudhalakshmi is one of the classic example of this kind of engagement, where she is a B.E. qualified candidate, since she has claimed to have been engaged, of course, by a private Contractor only based on the certificate given by the private Contractor, this kind of engagement has been identified, recognized, approved and accepted by the Government by including the name of such candidate in the list of NMR employees, who are eligible to get equal pay as well as for continuous engagement.

44. This kind of irregular entry into Government job even at the level of NMR employee, this Court feels, is with a long term plan to grab the Government job, as the Government has been regularizing NMR employees, who have worked continuously for more than 10 years.

45. In this context, it is further to be noted that, after a particular point of time, probably in the year 2011 or thereafter, many number of NMRS claimed to have been engaged only through the Contractors and their wages also had been paid only through the Contractors and not directly by PWD.

46. This has been evidenced, as the facts have been noticed by the Division Bench, in their order dated 31.01.2019, where the Division Bench has stated that, the very prayer itself is for engaging the Nominal Muster Roll workers directly by dispensing with the system of engaging them through the Contractor and pay them wages by adopting the principles of equal pay for equal work. Therefore, when it was the decision of engaging the NMR employees for years together only through the Contractors and wages also claimed to have been paid only through the Contractor, there would



have been lot of chances of malpractices, by which, many number of such candidates or persons claimed to have been engaged through the Contractors could have gained entry into the list of 3407 alleged NMR employees.

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47. This has been actually pointed out and placed before this Court on the petitioners' side.

48. After seeing the entire gamut of the issue and of course, after perusing the records placed before this Court, including the various letters issued by the second respondent to the Government, pursuant to which, the two G.Os., were issued by the Government, namely, 137 and 233, this Court feels that, not everything went on wrong, but at the same time, something went wrong at some point of time at somewhere.

49. Any how, now the Government have finalized the list at last, at least, with 3407 NMRs. Certainly, many hundreds of such NMR employees claimed to have been employed for some time, definitely, could not have been engaged directly by PWD and they could have gained entry only through the contractual employment, as they claimed, for which, the only records available before the PWD is the certificate issued by the Contractor.

50. As no records were available in the PWD, since these NMRs had not been directly engaged by them, merely on the basis of certificate issued by the individual private Contractors, the PWD department has come forward to identify that those people are also the NMR employees of PWD.

51. In this context, it is further interesting to be noted that, as per the G.O.No. 137 only 2406 NMR employees were identified and this has been specifically stated by the second respondent, in his letter dated 04.07.2019 with the words, "approximately numbering 2406 only". Though the word, "approximately" was used, how suddenly one thousand and one (1001) had been added within a short span of three or four months is still interesting to be noted. In this context, in the letter dated 15.11.2019, the second respondent has stated that, originally, the cut off date was 30.06.2017 as on that date, who were all the NMR employees eligible alone were taken into account, however, subsequently the cut off date was taken as 14.11.2019. Accordingly, in between 30.06.2017 and 14.11.2019, who are all engaged also had been added. If we take the said statement into account, those who had been engaged between 30.06.2017 and 14.11.2019, that too, through Contractors, had been added and such kind of people, accounting to one thousand members. Yet another fact also to be noted here that, the 14.11.2019 cut off date has been fixed as the date, on which, the screening committee has given the report.



52. The very voluminous report might have been given by the screening committee, because the screening committee is believed to have scrutinized the report given by the sub committee in respect of the entire 3407 people. If such a voluminous documents were filed by the screening committee to the second respondent only on 14.11.2019, how the second respondent within 24 hours, has come to the conclusion that, the screening committee's report can be forwarded to the Government for acceptance. Though the second respondent was also member of the screening committee, even then, how 14.11.2019 has been taken as a date is not known. Because the NMR engagement, that too, through the Contractors being undertaken at various sites and campus throughout the State and based on which, report should have been collected by Executive Engineers, who, in turn, should have forwarded the same to the Screening committee/sub committee and thereafter only, they should have scrutinized the same and prepared the report and the report submitted by the sub committee certainly should have been prior to 14.11.2019 and after scrutinizing the sub committee's report, the screening committee should have prepared a report and that was dated 14.11.2019. However, the date 14.11.2019 reckoned by the second respondent itself is accepted by the Government for the purpose of adding the 1001 candidates further and issued a G.O.No.233 accordingly, which date, in the considered opinion of this Court, might have been fixed only for the sake of completing the formalities.

53. Nevertheless, this Court exercising its jurisdiction under Article 226 of the Constitution of India cannot have a roving enquiry in respect of the documents submitted by each of the candidate, the sub committee's scrutiny and its report as well as the screening committee's report and find out who is right, who is wrong and who has to be in and who has to be out. Such a mammoth exercise is thoroughly impossible before this Court, while exercising the judicial power under Article 226 of the Constitution of India. Therefore, this Court, even though has strong view that at least something went wrong, still, has accepted the G.Os. only for the purpose of second part of the prayer sought for by the petitioners to give direction to the fourth respondent to thoroughly investigate the issue and file a report accordingly. That exercise, in the considered opinion of this Court, can be avoided at this juncture for the reasons that, in the G.Os. itself, the Government stated that, hereafter no NMRs shall be engaged by the PWD except the site mentioned at Item No.1, which means, at the official and private residences of the Hon'ble Judges of the Madras High Court both at Chennai and Madurai, the official residence of the Hon'ble Chief Minister of Tamil Nadu, the official and private residences of the Hon'ble Ministers of Government of Tamil Nadu and in the official residences of the Hon'ble Speaker and Deputy Speaker of the Tamil Nadu Legislative Assembly and Chief Whip and other dignitaries in the Government Bungalow at Raja Annamalaipuram, Chennai 28.



54. In view of the self-cap put in by the PWD, which has been accepted by the Government that, hereafter no more NMRs would be engaged either directly or indirectly by the PWD except the aforesaid places referred to above, this Court feels that, the G.Os., and the import of the G.Os., namely, 137 and 233 can be accepted. However, in future, if at all the Government wants to engage any NMR employees for emergency or in exigencies, no such direct engagement of NMR employees shall be made at any circumstances, except getting the names from the Employment Exchange concerned. In this regard, suitable educational qualifications, such as passing 10th standard and at least passing 12th standard or not beyond that, can be fixed.

55. Like that, in respect of the 3407 NMR employees, now have been identified for equal pay, their services shall not be regularised under any circumstances, unless they complete the continuous direct engagement of NMRs through the PWD for a satisfactory period of ten years, as being adopted in this regard hitherto.

56. In view of the aforesaid discussions and the factual matrix of this case, this Court is inclined to pass the following orders in this writ petition:

(1) That out of the 20 petitioners, except Petitioner Nos. 2, 15 and 19, others are not entitled to seek for any relief, as they have claimed in this writ petition. Therefore, insofar as the other 17 petitioners, the prayer sought for by the petitioners is rejected.

(2) In respect of the petitioner Nos. 2, 15 and 19, based on the certificate issued by the very PWD Executive Engineers concerned certifying that, they have been engaged directly as NMR employees for more than five years and ten years respectively, their candidature can be considered by the respondents PWD for the continuous engagement.

(3) In future, as has been declared in the G.O. 137 Public Works Department dated 13.09.2019, no NMR employees shall be engaged in the Public Works Department, except at the campus, sites indicated in Item No. (i) of Paragraph 6 of G.O. 137. However, for any emergency or contingency, if the Government decides to engage any new NMR employees only for the specific purpose or for a limited period, even such engagement shall be strictly made only from among the candidates, whose names are sponsored by the concerned Employment Exchange and at no circumstances, direct engagement shall be made by way of pick and choose method by the PWD officials.

(4) The Government shall come forward to issue necessary Government orders prescribing the age, educational qualifications and physical fitness for the purpose of engagement and method of



engagement of NMR employees in future.

(5) In this context, the G.O., may indicate or prescribe the educational qualifications of only or the maximum of up to Higher Secondary, ie., +2 and as far as possible, such engagement shall only be made from among the candidates, who have the educational qualification only upto +2 and the highly qualified people, who are having professional degrees and other equal under graduate and post graduate degrees shall be avoided.

57. With these directions and observations, this writ petition to the terms indicated hereinabove is disposed of. However, there shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

RR

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Secretary to Government
State of Tamil Nadu
Public Works Department
Secretariat, Fort St. George,
Chennai.

2.The Chief Engineer (General)/
The Engineer in Chief WRD
Public Works Department
Chepauk, Chennai.

3.The Chief Engineer,
Water Resource Department
Public Works Department
Madurai Region,
Madurai



4.The Director of Vigilance and Anti Corruption
O/o. the Director of Vigilance and Anti-Corruption,
Chennai.

5.The Employees Provident Fund Organisation,
Rep. by its Regional Provident Fund,
Commissioner, Madurai.

+1 CC to M/s.M. SARAVANAKUMAR, Advocate (SR-19134[F] dated
06/10/2020)

+1 CC to M/s.GP (SR-19092[F] dated 05/10/2020)

W.P. (MD) No.8092 of 2020 and
W.M.P. (MD) No.7518 of 2020
01.10.2020

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KG (CO)

KK(12.10.2020) 35P 8C