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Writ Appeal Nos.2538 and 2541 of 2019

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**Dated: 30.11.2023**

**CORAM**

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR  
AND  
THE HONOURABLE MR. JUSTICE G.ARUL MURUGAN**

**Writ Appeal Nos.2538 and 2541 of 2019  
and C.M.P.Nos.16448, 16449 and 18625 of 2019**

1. State of Tamil Nadu rep. By its Secretary,  
Youth Welfare & Sports Development Dept.  
Secretariat, Chennai – 600 009.
2. The Director,  
National Cadet Corps Directorate,  
Tamil Nadu, Pondicherry and Andaman Nicobar,  
Fort St. George,  
Chennai – 600 009. ... Appellants in both W.As.
3. Group Commander,  
NCC Group Headquarters,  
Coimbatore. ... 3<sup>rd</sup> Appellant in W.A.No.2538/2019
3. Group Commander,  
NCC Group Headquarters,  
Madras “B”,  
161, Periyar EVR High Road,  
Kilpauk, Madras – 600 010. .... 3<sup>rd</sup> Appellant in W.A.No.2541/2019

**Vs**

A.Mallika ... Respondent in W.A.No.2538/2019  
N.Jayaseelan ... Respondent in W.A.No.2541/2019



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**PRAYER:** Writ Appeals filed under Clause 15 of Letters Patent, to set aside the order dated 25.10.2016 made in W.P.Nos.8242 and 8243 of 2011 by allowing these writ appeals.

|                                 |                                                   |
|---------------------------------|---------------------------------------------------|
| For Appellants<br>in both W.As. | : Mr.R.Kumaravel<br>Additional Government Pleader |
| For Respondent                  | : Mr.K.Kathiresan<br>in W.A.No.2538/2019          |
|                                 | No appearance in<br>W.A.No.2541/2019              |

### **COMMON JUDGMENT**

(Judgment of the Court was delivered by R.SURESH KUMAR,J.)

These writ appeals arising out of the common order passed by the Writ Court by order dated 25.10.2016 made in W.P.Nos.8242 and 8243 of 2011.

2. The respondents in these appeals were engaged as a part time sweepers at the appellant Department in the year 1995 or thereafter. They had been working in that capacity as part time sweepers, as they have put in service of 10 years or 20 years or even more, they made a request to the Government or the Department concerned to regularize their services.

3. In this context it is to be noted that the Government had issued



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orders in G.O.Ms.No.385, Finance (Pay Cell) Department, dated 01.10.2010 to the effect that the service of the sweepers who are under employment at the Government or local bodies on daily wages and on consolidated pay may be brought under time scale of pay of Rs.1300-3000 + grade pay of Rs.300/- provided that they have to be put not less than 3 years of service under the Government.

4. Based on this G.O, these respondents had made a request by way of representations in the year 2010 to the appellant Department to regularize their services on completion of three years period from the date of their initial appointment or engagement.

5. The Government had come forward to issue G.O.Ms.No.79, Youth Welfare and Sports Development Department, dated 19.12.2012, under which not only these two respondents, but also some more similarly placed part time sweepers working in the same Department of the appellant had been considered in consonance with G.O.Ms.No.385 and accordingly, they had been brought under Special Time Scale pay from the date of the order i.e., from 19.12.2012.

6. Despite this order i.e., G.O.Ms.No.79 having been passed, the



respondents had approached the Writ Court by filing the respective writ petitions seeking for a writ of mandamus to direct the respondents therein, who are the appellants herein to regularize the services of the respondents/writ petitioners in time scale of pay by considering their representations dated 20.09.2010.

7. The said writ petitions along with yet another writ petition came to be disposed by the impugned common order dated 25.10.2016 by the Writ Court, where the learned Judge was of the view that in view of G.O.Ms.No.385, the appellant Department ought to have regularized the services of these part time sweepers on completion of three years period and the services should have been regularized and not by way of bringing them under special time scale of pay and accordingly a direction was given by the learned Judge through the impugned order that the representations of the respondents/writ petitioners dated 20.09.2010 to be considered and consequentially their services have to be regularized in time scale of pay.

8. Aggrieved over the said order passed by the Writ court, the



present appeals have been directed.

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9. Heard Mr.R.Kumaravel, learned Additional Government Pleader appearing for the appellants and Mr.K.Kathiresan, learned counsel appearing for the respondent in W.A.No.2538 of 2019. There is no representation for the sole respondent in W.A.No.2541 of 2019.

10. In fact the issue raised in these appeals have already been raised in the intra-court appeals in W.A.(MD).Nos.1155 to 1159 of 2014. Those writ appeals were disposed of by a common order passed by the Division Bench of this Court dated 28.01.2016, wherein exactly this issue has been considered.

11. The reason being that, under G.O.Ms.No.79, dated 19.12.2012, which in fact was issued pursuant to G.O.Ms.No.385, these two respondents/writ petitioners along with other such persons who are also similarly placed as part time sweepers had been considered by the Government and they had been brought under the special time scale of pay. The relevant portion of the order in G.O.Ms.No.79 reads thus:

*“6. The Government after careful examination  
accept the proposal of the Deputy Director General,*



*National Cadet Corps and accord permission to sanction to create 11 posts of Sweeper in Special Time Scale of Pay of Rs.1,300 – 3000 + G.P 300/- so as to absorb the following 11(Eleven) Part Time Sweepers with effect from the date of this order:-*

1. *Tmt. C.Ravanamma*
2. *Thiru. N.Jayaseelan*
3. *Thiru. N.Mariappan*
4. *Tmt.A.Mallika*
5. *Thiru. S.Muthu*
6. *Tmt.M.Sornabai*
7. *Thiru G.Madasamy*
8. *Thiru K.Amavasai*
9. *Tmt. G.Thamayanthi*
10. *Thiru. R.Mariappan*
11. *Thiru Kanniappan*

*on the post sanctioned above.*

12. This has been considered by the Division Bench in its order dated 28.01.2016 in the following passages:

*“5. As seen from what is extracted above, the learned Judge allowed the writ petitions of the respondents on the sole ground that the issue was covered by the decision of a Division Bench of this Court, dated 02.03.2011, passed in W.A.(MD).No.273 of 2011. A careful look at the order, dated 02.03.2011, passed in W.A.(MD).No.273 of 2011 would show that the same was passed on the basis of a Government Order issued in G.O.Ms.No.125, Municipal*



*Administration and Water Supply Department, dated 27.05.1999. But, the said order was actually confined to cases of persons appointed in the Municipal Administration and Water Supply Department and who had put in long years of service on full time basis. W.A.(MD)No.273 of 2011 arose completely under different circumstances. The Government itself was agreeable in that case to regularize the services of the contesting respondents in W.A.(MD).No.273 of 2011 with effect from 01.03.2006, on the basis of G.O.Ms.No.21, Municipal Administration and Water Supply Department, dated 23.02.2006. But, the individuals claimed that they are entitled to regularization from the date of appointment, irrespective of a band order that was in force under G.O.Ms.No.463, Finance Department, dated 23.11.2001.*

*6. In other words, the issue that arose in W.A.(MD).No.273 of 2011 was completely different from the issue raised in the writ petitions filed by the respondents. Even if the issues are one and the same, much water has flown under the bridge, thereafter.*

*7. As a matter of fact, the respondents were admittedly appointed as part-time sweepers. The question whether part-time employees are entitled to be regularized has already been answered by the Supreme by judgment,*



*dated 21.02.2014, in Appeal Nos.2726 to 2729 of 2014, reported in Secretary to Government Vs. R.Govindaswamy – CDJ 2014 SC 146.*

8. *The respondents herein pitched their claim for regularization on the basis of continuous service for more than 10 years. It is the very same argument that was rejected by the Supreme Court in Secretary to Government Vs. R.Govindaswamy.*

9. *In State of Tamil Nadu Vs. M.Seeniammal – 2014 (5) CTC 474, a Division Bench of this Court rejected the claims of persons who are similarly placed like the respondents herein. Therefore, the decision of the Supreme in Secretary to Government Vs. R.Govindaswamy and the latest decision of a Division Bench of this Court in State of Tamil Nadu Vs. M.Seeniammal now hold the field and the order of the learned Judge cannot be sustained.*

10. *There is also one more additional reason. The respondents were appointed as part-time sweepers in the Directorate of National Cadet Corps on consolidated pay. By G.O.Ms.No.385, Finance Department, dated 01.10.2010, the Government directed sweepers working on daily wage basis and who have completed three years of service to be brought into regular time scale of pay. Based upon the said order, the Government had already issued*



*G.O.Ms.No.79, Youth Welfare and Sports Development Department, dated 19.12.2012, sanctioning the creation of 11 posts of sweepers in Special time scale of pay so as to absorb 11 persons. The five respondent in these five appeals are included in the said list. In other words, by G.O.Ms.No.79, Youth Welfare and Sports Development Department, dated 19.12.2012, the respondents herein have been absorbed into regular time scale of pay with effect from the date of the order. This itself is a concession granted to the respondents, despite the fact that the respondents were only part-time sweepers.”*

13. Therefore, it has been discussed in extenso by the Division Bench in the said judgment as to the right of the part time sweepers and also by taking note of the relevant Government Orders including the said Government Orders i.e., G.O.Ms.No.385, Finance (Pay Cell), Department, dated 01.10.2010 as well as G.O.Ms.No.79, Youth Welfare and Sports Development Department, dated 19.12.2012 and had ultimately held that the respondents in those writ appeals, who were the writ petitioners in the other batch of cases, who all are similarly placed like the respondents/writ petitioners as part time sweepers and had been covered under the G.O.Ms.No.79 are not entitled for any other relief



other than what has been given under G.O.Ms.No.79 and accordingly, the additional relief that has been given by the Writ Court was set aside and the writ appeals were allowed by the said judgment of the Division Bench dated 28.01.2016.

14. We are in complete agreement with the said view expressed by the said Division Bench, therefore, the issue raised in these appeals are fully covered with the said issue.

15. Resultantly, the following orders are passed in these appeals:

- ◆ That the order passed by the learned Judge, which is impugned herein is set aside. As a sequel, what was the benefit that has been conferred on these respondents/writ petitioners by virtue of G.O.Ms.No.79, Youth Welfare and Sports Development Department, dated 19.12.2012 shall be protected and based on which whatever service benefits for which they are entitled to can be calculated and be paid to them, if the same has not already been calculated and paid to them.



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**WEB COPY** With these observations and directions, these writ appeals are ordered accordingly. No costs. Connected miscellaneous petitions are closed.

**(R.S.K.,J.)**

**(G.A.M., J.)**

**30.11.2023**

Index: Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

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