



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2024

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Writ Petition No.10594 of 2024
and WMP No.11638 of 2024

1.C.Kulla Karuppan

2.V.Sakthivel

3.M.Thanigachalam

.... Petitioners

-Vs-

1.The State of Tamil Nadu
Rep.by its Secretary
Education Department
Fort St.George
Chennai 600 009.

2.The Director of School Education
DPI Campus
Chennai 600 006.

..Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the 1st respondent in G.O.Ms.No.321 School Education Department dated 22.12.2010 and quash the same so far as they are provides for appointment of the petitioners in the post of sweepers/night watchman on consolidated pay of rs.4500/- per month and the consequential order of the 2nd respondent in Na.Ka.No.060550/A5/E2/2023 dated 10.08.2023 and quash the same and consequently direct the respondents to



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regularise the services of the petitioners on completion of 10 years of service with all attendant, service and monetary benefits.

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For Petitioners : Mrs.Dakshayini Reddy
Senior Counsel
for Ms.S.Suneetha

For Respondents : Mr.S.Prabhakaran
Government Advocate

ORDER

This writ petition has been filed challenging the Government Order issued by the 1st respondent in G.O.Ms.No.321 dated 22.12.2010 insofar as the appointment of the petitioners in the post of sweepers/night watchman being brought under the consolidated pay and the consequential order of the 2nd respondent dated 10.08.2023 and for a direction to the respondents to regularize the services of the petitioner on completion of 10 years of service with all attendant, service and monetary benefits.

2.The scope and ambit of the present writ petition was captured in the earlier order passed by this Court on 07.08.2024 and the same is extracted hereunder:

The learned Additional Government Pleader appearing on behalf of the respondents seeks for time to file counter in this case.

2.Upon considering the submission made by the learned Senior Counsel appearing on behalf of the petitioners and on going through the materials, it is seen that the petitioners were all appointed as



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Ministerial Staff in Model Schools all over Tamil Nadu. The relevant Government Order in G.O.Ms.No.321 dated 22.12.2010, when it comes to the appointment of the teachers, regular scale of pay has been fixed. However, while dealing with the non-teaching staff, only pay on consolidated basis has been provided. Therefore, this Government Order has been put to challenge and the consequential proceedings of the 2nd respondent dated 10.08.2023, following this Government Order has also been put to challenge. The petitioners have sought for regularisation of their services on completion of 10 years of service with all attendant service and monetary benefits.

3.The learned Senior Counsel also brought to the notice of this Court the order passed by the Full Bench in W.P.No.23823 of 2023, dated 26.02.2024. Post this case under the caption 'for orders on **29.08.2024**. In the meantime, the counter shall be filed.

3.The 2nd respondent has filed counter affidavit. The stand taken by the 2nd respondent in the counter affidavit is extracted hereunder:

5.It is submitted that the 2nd respondent called for the list from the concerned Employment Exchange Office for the recruitment of the post of Scavenger, Sweepers and Night Watchmen as non teaching staffs on the consolidated pay of Rs.4500/-, on the basis of the G.O.321, School Education Department dt.22.12.2010 and based on the list, call for letter was issued to the given listed candidates for the recruitment process. The petitioners are also the candidates in the given list.



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6.Further it is submitted that the petitioners had participated in the selection process along with the other candidates and they had been selected by the Appointment Authority and appointment orders were given to them and they were appointed as Night Watchmen/Sweeper/Scavenger.

7.It is submitted that the petitioner was appointed as Night Watchman/Sweeper/Scavenger as per the G.O.No.321, School Education department dt.22.12.2010 and from the date of their appointment, they are doing their duties as per appointment order and the consolidated pay of a sum of Rs.4500/- was drawn and disbursed to them, without any deviation. Still now there is no dispute regarding the disbursement of the consolidated pay to them as per G.O.No.321, School Education Department dt.22-12.2010.

8.Further it is submitted that the 2nd Respondent has acted squarely based on the directions of the said G.O.No.321, School Education Department dt.22-12-2010.

9.It is submitted that the 2nd Respondent is only a authority for recruitment of persons for the non-teaching staffs as per G.O.No.321, School Education Department dt.22-12-2010 under the direction of the 1st Respondent. Hence all the decisions for the recruitment process for the impugned post is taken by the 1st Respondent. Thereby the 2nd Respondent have to follow the G.O.No.321, School Education Department dt.22-12-2010. Hence the contention and prayer of the petitioners are not acceptable and not maintainable and liable to be dismissed.

10.Further the 2nd respondent submitted in continuation of the earlier G.O.No.321, on the request of the concerned employees, the



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said consolidated pay of Rs.4500/- was increased to Rs.10000/- as per G.O.No.120, dt.10.06.2024 by the proceedings of the 1st Respondent. Thereby the petitioners are getting the consolidated pay a sum of Rs.10000/- as per the said G.O.No.120, with effect from 05.06.2024.

11.It is further submitted that against earlier batch of orders issued by this Hon'ble Division of this Hon'ble Court in some other cases issuing direction regularising the part time Services, the department has preferred special leave petitions before Supreme Court of India and obtained stay order in the case as follows:

W.P.No/W.A.No.	Petitioner Name	SLP (C) Diary No.
W.A.No.1258/2019	G.Sugumaran and Others	SLP(C)Diary No.4576/2022
W.P.No.20399/2013	E.Srinivasan	SLP(C)Diary No.1412/2023
W.P.No.15774/2013	Rajesh	SLP(C)DiaryNo.1454/2023
W.P.No.21156/2012	N.Ramachandran	SLP(C)Diary No.1418/2023
W.P.No.12804/2013	G.Purushothaman	SLP(C)Diary No.1408 /2023
W.P.No.11007/2013	G.Baskar	SLP(C)Diary No.1417 /2023
W.P.No.13282/2017	A.Vijayan	SLP(C)Diary No.1415 /2023
W.P.No.15596/2013	A.P.Selvaraju	SLP(C)Diary No.1425 /2023
W.P.No.23982/2012	Vellore Tamilnadu Parents Teachers Association Office Assistant, Vellore	SLP(C)Diary No.1447 /2023
W.P.No.16680/2012	Ramajayam	SLP(C)Diary No.1429 /2023
W.P.No.23233/2012	A.Perumal	SLP(C)Diary No.2024a-2023/2023

4.Heard Mrs.Dakshayini Reddy, learned Senior Counsel for the petitioners and Mr.S.Prabhakaran, learned Government Advocate for the respondents.



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5.The primordial submission that was made by the learned Senior Counsel appearing on behalf of the petitioners is that the impugned Government Order in G.O.Ms.No.321 dated 22.12.2010, has discriminated between teaching and non-teaching staffs since insofar as the teaching staffs are concerned, they were brought under the regular scale of pay and insofar as the non-teaching staffs are concerned they were brought under the consolidated pay. The next ground that was raised by the learned Senior Counsel is that the petitioners, who are doing the menial job of night watchman, sweeper/scavenger from the year 2012 onwards should also being brought within the scale of pay since they have been working from the year 2012 onwards and their job is equally important to that of the one performed by the teaching staff. The final submission that was made by the learned Senior Counsel is that such discrimination had taken place even in the regular Government Schools and G.O.Ms.No.47 dated 02.03.2012, which only fixed a special time scale of pay to the scavengers was put to challenge before this Court in W.P(MD).No.17663 of 2014 and that this Court by an order dated 25.01.2018, struck down the offending portion of the Government Order and directed that the scavengers must also be brought within the regular time scale of pay. The learned Senior Counsel submitted that pursuant to the orders passed by the learned Single Judge, the same was confirmed by the Division Bench in W.A(MD).No.1584 of 2018. In continuation of the same, the Government issued G.O.Ms.No.50 dated 08.03.2019 and fixed the regular scale of pay. The petitioners, who are also similarly placed are entitled for regular time scale of pay as



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per G.O.Ms.No.50 dated 08.03.2019. The learned Senior Counsel further clarified that even though the petitioners were appointed in the year 2012 on a consolidated pay on a temporary/contractual basis, they have continuously worked for more than 10 years and therefore, the services of the petitioners must be regularized in line with the judgment of the Full Bench in WP.No.23823 of 2023 dated 26.02.2024.

6.Per contra, the learned Government Advocate appearing on behalf of the respondents submitted that even when the petitioners were employed in the year 2012, they were given employment only on a temporary/contractual basis and only a consolidated pay was fixed. It was further contended that the impugned Government Order had also continued with this consolidated pay and the consolidated pay has now been increased to Rs.10,000/- as per G.O.Ms.No.120 dated 10.06.2024. Hence, it was contended that the petitioners cannot seek for regularization and for regular scale of pay since their appointment itself was done on a contractual basis on a consolidated pay. In view of the same, the learned Government Advocate reiterating the stand taken in the counter affidavit, sought for the dismissal of this writ petition.

7.The petitioners were appointed as ministerial staff in model Schools on consolidated pay on a temporary/contractual basis. Insofar the 1st and 2nd petitioners are concerned, they were appointed as night watchman and the 3rd petitioner was appointed as sweeper/scavenger. The 1st petitioner was appointed on 06.06.2012 and



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the 2nd and 3rd petitioners were appointed on 19.02.2012. Their appointment was based on the orders passed by the Chief Educational Officer, Villupuram District. It is also quite evident from the records as well as the counter affidavit filed by the 2nd respondent that the list was called for from the Employment Exchange and the petitioners were appointed as ministerial staff. There is also no dispute with regard to the fact that the services of the petitioner has been continued till date. Pursuant to G.O.Ms.No.120 dated 10.06.2024, the petitioners are getting a consolidated pay of Rs.10,000/-.

8.The model Schools were initially run under the AGES of the Central Government and later, it was taken over by the State Government from the financial year 2015 - 2016. By virtue of G.O.Ms.No.321 dated 22.12.2010, the Government decided to fix the scale of pay for teaching and non-teaching staff. When it came to teaching staff, the Government proceeded to fix regular scale of pay. However, insofar as the non-teaching staffs are concerned, they were all brought under the consolidated pay. Accordingly, the post of night watchman and sweeper/scavenger was also brought within the consolidated pay.

9.The first ground that was raised by the learned Senior Counsel appearing on behalf of the petitioners is that when the Government decided to fix the scale of pay, they should not have discriminated between the teaching staff and the non-teaching



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staff and both of them should have been brought within the regular scale of pay.

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10.The above submission made by the learned Senior Counsel carries a lot of force. While running a School or for that matter any establishment, the persons who are doing the menial job of maintaining the School or establishment are performing a very important job and without their contribution, it will become impossible to run the very School or establishment itself. Therefore, the non-teaching staff and particularly those who are doing the menial jobs, are as important as the teachers who are coming within the fold of the teaching staff. Hence, when the Government decided to fix the pay, both teaching and the non-teaching staff should have been treated equally and the regular scale of pay should have been fixed for persons falling under both categories.

11.The main ground that was taken on the side of the respondents is that the petitioners were only appointed on contractual/temporary basis and were brought within the consolidated pay. Therefore, they cannot seek for regular scale of pay.

12.The fact remains that the petitioners did not make any back door entry. The list was called for by the Chief Educational Officer, Villupuram District from the Employment Exchange and only thereafter, the petitioners were appointed through the proceedings of the CEO, Villupuram District on 06.06.2012 and 19.02.2012



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respectively. The process of adopting out source method for persons doing menial jobs was commenced only from the year 2019. The petitioners cannot be brought within the category of contract workers since they have been appointed by the proceedings of the CEO and admittedly on a temporary basis on consolidated pay.

13.The above issue is no longer res integra and it is squarely covered by the judgment of the Full Bench in W.P.No.23823 of 2023 dated 26.02.2024. The Full Bench after going through the entire law on this subject has come to a categorical conclusion that wherever a person has been engaged on a temporary or a part time basis for a period of 10 years, the Government will have to necessarily regularize their services. For this purpose, the Full Bench also recognized 86 categories of posts enumerated in the Tamil Nadu basic service. For proper appreciation, the relevant portions are extracted hereunder:

38.In fine, we hold

(a)If it shown that the appointment is made to anyone of the 86 categories of posts enumerated in the Tamil Nadu Basic Service immaterial of the fact that whether such appointment is part-time or full-time, the employee would be entitled to the benefit of regularisation *dehors* G.O.Ms.No.74 dated 27.06.2023.

(b)If it is shown that the nature of employment is temporary and the requirement will cease to exist after a particular time, like those appointments that are made under various welfare schemes, it will then be open to the Government to engage temporary employees or part-time employees.



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14. In view of the above judgment, the petitioners cannot be continued to be treated as part time/contractual employees since the petitioners have already put in service of more than 10 years. That apart, the services of the petitioner has been engaged regularly till date on a consolidated pay which only means that the services of the petitioner is required for running the institution.

15. The next issue is with regard to the scale of pay that has been extended to the petitioners. For this purpose, it will be useful to refer the order passed by the learned Single Judge of this Court in WP(MD).No.17663 of 2014. In that case, the Government proceeded to fix special time scale of pay for the post of scavengers in the Education Department and that was put to challenge on the ground that it was discriminatory. The learned Single Judge allowed this writ petition by an order dated 25.01.2018 and the relevant portion is extracted hereunder:

9. The offending Clause 2(i) in the impugned G.O.(Ms). No.47, School Education (R.1) Department, dated 02.03.2012 is struck down as unconstitutional. A direction shall issue to place the Scavengers who were appointed as per G.O.(Ms).No.47, School Education (R.1) Department, dated 02.03.2012 on par with the other scavengers working in Education Department and who are receiving the regular time scale of pay i.e Rs.4,800-10,000 + Grade Pay Rs.1,300/- from the date of their appointment. The members of the petitioner's Association will be entitled to the benefit of this Revision and placement in the higher pay scale notionally from the date of their appointment and with



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monetary effect from the date of passing of this order. The respondent is directed to issue appropriate orders in this regard within a period of eight weeks from the date of receipt of a copy of this order.

16.The above judgment was also confirmed by the Division Bench of this Court in W.A(MD).No.1584 of 2018, dated 29.01.2019. The Division Bench took note of the judgment of the Apex Court in State of Punjab and Others v. Jagjit Singh and Others reported in (2017) 1 SCC 148.

17.Pursuant to the above, G.O.Ms.No.50 dated 08.03.2019, was issued and the scavengers were also brought within the regular scale of pay.

18.The petitioners are also similarly placed. They are performing a menial job of night watchman, sweeper/scavenger. They must also be entitled for the same scale of pay as was fixed for those working in the Education Department by the Government.

19.In the light of the above discussion, this Court holds that G.O.Ms.No.321 dated 22.12.2010, is illegal insofar as the non-teaching staffs were brought under the consolidated pay and were not treated on par with the teaching staff by fixing a regular scale of pay for them also. As a sequitur the impugned proceedings of the 2nd respondent dated 10.08.2023, also stands quashed. As a consequence, the



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petitioners are also entitled to be brought within the regular scale of pay. The petitioners have admittedly put in more than 10 years of service since they are working from the year 2012. Hence in line with the judgment of the Full Bench in WP.No.23827 of 2024, dated 26.02.2024, their services must be regularized since they will be coming within one of the category that has been enumerated in the Tamil Nadu basic service. Appropriate orders must be passed in this regard by the 2nd respondent within a period of six weeks from the date of receipt of copy of the order. On such orders being passed, the regular scale of pay shall be fixed for the petitioners in line with G.O.Ms.No.50 dated 08.03.2019, from the date of their regularization.

20.In the result, this writ petition is allowed in the above terms. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes
NCS : Yes
KP

To

1.The Secretary
State of Tamil Nadu
Education Department
Fort St.George
Chennai 600 009.

2.The Director of School Education
DPI Campus
Chennai 600 006.



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N.ANAND VENKATESH, J.

KP

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