



W.P.No.14079 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2024

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.14079 of 2020 and
W.M.P.Nos.21790 of 2021, 17471, 17473,
17474, 17467 & 17468 of 2020

- 1.P.Anitha
- 2.K.Deepabai
- 3.V.Kamatchi
- 4.P.Meenatchi
- 5.C.Murugan
- 6.P.Saravanan
- 7.Anandha Kumar
- 8.Y.Arul
- 9.A.Arumairathinam
10. S.Ganesan
- 11.D.James
- 12.K.Kubendran
- 13.K.Mahalakshmi
- 14.M.Marichamy
- 15.S.Mariyappan
- 16.V.Murugan
- 17.V.Murugesan
- 18.P.Natarajan
- 19.N.Periyasamy
- 20.A.Parimala
- 21.S.Pularappan
- 22.M.Rakaiya
- 23.V.Saraswathi
- 24.R.Seenivasan
- 25.N.Shanthi



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26.S.Thangapandian
27.K.Udhaya Kumar
28.N.Vadivel
29.P.Veerapandi
30.S.Velankanni

... Petitioners

Vs.

- 1.The Government of Tamil Nadu,
Rep by its Secretary to
Backward Classes, Most Backward Classes,
Denotified Communities and Minorities Welfare Department,
Secretariat, Chennai 600 009.
- 2.The Principal Secretary and Commissioner,
Backward Classes, Most Backward Classes,
Welfare Department,
Ezhilagam, Chepauk,
Chennai 600 005.
- 3.The Director,
Directorate of Backward Classes Welfare Department,
Ezhilagam, Chepauk,
Chennai 600 005.
- 4.The District Welfare Officer for Backward
Classes and Minorities, Collectorate Campus,
Ariyalur.
- 5.The District Welfare Officer for Backward Classes
and Minorities, Collectorate Campus,
Cuddalore.
- 6.The District Welfare Officer for Backward Classes
and Minorities, Collectorate Campus, Tiruppathur.



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7.The District Welfare Officer for Backward Classes and Minorities, Collectorate Campus, Vellore.

8.The District Welfare Officer for Backward Classes and Minorities, Collectorate Campus, Dindigul.

9.The District Welfare Officer for Backward Classes and Minorities, Collectorate Campus, Ramanathapuram.

10.The District Welfare Officer for Backward Classes and Minorities, Collectorate Campus, Tirunelveli.

11.The District Welfare Officer for Backward Classes and Minorities, Collectorate Campus, Theni.

(R4 to R11 are impleaded as per the order dated 01.12.2023 in W.M.P.No.19058 of 2022 in W.P.No.14079 of 2020)

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent in Letter No.B4/2874/2020 dated 28.08.2020 relating to the recruitment of Cooks in regular time scale of pay for the student's Hostel and quash the same and further direct the respondents to consider the representation dated 02.03.2016, 21.03.2019 and 25.06.2019 and issue fresh notification by issuing proper direction to the respective "District Backward Classes and Minorities Welfare Officer" to appoint



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the petitioners as Cooks in the placements which they were presently working by absorbing their initial appointment as Sweeper and consequently, direct the respondents to extend the benefits to the petitioners pursuant to the G.O.Ms.No.385 of Finance Department, dated 01.10.2010 and G.O.Ms.No.81 & 82 of Adi-Dravidar Welfare Department dated 10.08.2020.

For Petitioners : Mr.Balan Haridas for
Mr.S.Parthasarathy
For Respondents : Mr.P.Kumaresan, AAG assisted by
Mr.S.John J.Raja Singh, AGP

ORDER

This Writ Petition has been filed seeking issuance of a Writ of Certiorarified Mandamus, to call for the records of the first respondent in Letter No.B4/2874/2020 dated 28.08.2020 relating to the recruitment of Cooks in regular time scale of pay for the student's Hostel and quash the same and further direct the respondents to consider the representation dated 02.03.2016, 21.03.2019 and 25.06.2019 and issue fresh notification by issuing proper direction to the respective "District Backward Classes and Minorities Welfare Officer" to appoint the petitioners as Cooks in the placements in which they are presently working as Sweepers and consequently, direct the respondents to extend the benefits to the



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petitioners pursuant to the G.O.Ms.No.385 of Finance Department, dated 01.10.2010 and G.O.Ms.No.81 & 82 of Adi-Dravidar Welfare Department dated 10.08.2020.

2. Heard Mr.Balan Haridas, learned counsel for the petitioners and Mr.P.Kumaresan, learned Additional Advocate General assisted by Mr.S.John J.Raja Singh, learned Additional Government Pleader for the respondents.

3. The petitioners who are working as sweepers at the Government hostels run by the respondents' Department, have filed this Writ Petition, seeking to set aside the proceedings in Letter No.B4/2874/2020, dated 28.08.2020, issued by the 1st respondent relating to the recruitment of Cooks in regular time scale of pay for the students hostel and consequently direct the respondents to consider the representation of the petitioners dated 02.03.2016, 21.03.2019 and 25.06.2019 and issue fresh notification by issuing proper direction to the respective 'District Backward Classes and Minorities Welfare Officer' to appoint the



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petitioners as Cooks in the placements in which they are presently working by absorbing their initial appointment as Sweepers.

4. Mr.Balan Haridas, learned counsel for the petitioners submitted that the petitioners were working continuously for eight years in the students hostel. However, neither their services were made permanent nor their salaries were revised. One of the similarly placed persons filed a Writ Petition in W.P.No.36556 of 2015. Based on the order passed by this Court, some of the persons were appointed as Cook in the Students Hostel run by some other departments. The petitioners and their association made numerous representations to the Authorities seeking to regularise and to appoint them as cooks and that has not been considered so far. But the Government has proposed to recruit cooks by direct recruitment by issuing the impugned notification.

5. It is further submitted by the learned counsel for the petitioners that one similarly placed person S.Kamatchi has filed a Writ Petition in W.P.No.36556 of 2015 to appoint her as Cook in the time scale taking



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into consideration of the services rendered by her in the same department. The said writ Petition was allowed. Subsequently an order has been passed by appointing the said person as Cook. Subsequently, various orders have been passed in respect of various persons by appointing them as cook. Referring the above, the petitioners now claim that they are also entitled to be treated on par with those Sweepers who have been engaged as Cooks, though they have been appointed as sanitary workers initially.

6. In support of the above claim, the learned counsel for the petitioners cited the judgment of the Hon'ble Supreme Court rendered in the case of ***Maharaj Krishan Bhatt and Another Vs. State of Jammu and Kashmir and Others, reported in (2008) 9 SCC 24***. In the said case, it is held as under:

"21. It was no doubt contended by the learned counsel for the respondent-State that [Article 14](#) or 16 of the Constitution cannot be invoked and pressed in service to perpetuate illegality. It was submitted that if one illegal action is taken, a person whose case is



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similar, cannot invoke [Article 14](#) or 16 and demand similar relief illegally or against a statute.

22. There can be no two opinions about the legal proposition as submitted by the learned counsel for the State. But in the case on hand, in our opinion, there was no illegality on the part of the learned Single Judge in allowing Writ petition No. 519 of 1997 instituted by Abdul Rashid Rather and in issuing necessary directions. Since the action was legal and in consonance with law, the Division Bench confirmed it and this Court did not think it proper to interfere with the said order and dismissed Special Leave Petition. To us, in the circumstances, the learned Single Judge was wholly right and fully justified in following the judgment and order in Writ Petition No. 519 of 1987 in the case of present writ petitioners also."

7. By citing the above judgment, it is submitted that the benefit has been extended to a few of the similarly placed persons and hence the petitioners should also be considered and they should also be appointed as Cook in the pattern in which the other sweepers have already been appointed.



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8. Mr.P.Kumaresan, learned Additional Advocate General appearing for the respondents submitted that so far the petitioners' claim of seeking time scale after completion of three years of service is concerned, the same has already been implemented and the petitioners are being paid with time scale pay. However, the petitioners claim that the time scale has to be paid from the date of regularisation and not from the date of Government Order i.e., 10.08.2020.

9. As per the G.O.Ms.No.81 dated 10.08.2020, the time scale was allowed to be paid to the petitioners and similarly placed persons from 10.08.2020. The petitioners have claimed that they have to be given with regular time scale after completion of three years from the date of their initial appointment. The same should have been paid from the date of completion of three years of service from their initial appointment. So far as the above relief is concerned, it is obligatory on the part of the Government to consider the representation of the petitioners in the light of G.O.Ms.No.385 dated 01.10.2010. As regards to the other relief that the petitioners should have been appointed as cook is concerned, it has to



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be considered in the light of the earlier orders issued in the Writ Petitions filed by Kamatchi and Paulraj.

10. The learned Additional Advocate General further submitted that the persons who have been appointed pursuant to the orders of the Writ Petition had also participated in the selection process and they have been appointed only after they were found to be qualified for the post of cook. It is submitted that for the recruitment of cook, the rules have been framed and that the qualification for the post of cook is entirely different from the qualification for sanitary workers. No doubt the work nature of cook and the sanitary worker is completely different. It would have been a different case, if the petitioners had applied for the post of cook in view of notification given in this regard by the second respondent. The attention of this Court was drawn to the Judgment of the Hon'ble Supreme Court held in the case of *The Secretary to State of Karnataka and Others Vs. Umadevi and Others* and submitted that the petitioners cannot claim that their rights under Article 14 and 16 have been violated and they have been treated unfairly. In this regard, paragraph No.39 of the said judgment is extracted hereunder:



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"39. *It was then contended that the rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries for doing similar work. The employees before us were engaged on daily wages in the concerned department on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court,*



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they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled. "

11. By citing the above judgment, it is submitted by the learned Additional Advocate General that the petitioners who belonged to different category all together cannot claim as a matter of right that they should be appointed as cooks. The petitioners have taken the cue only in pursuant to the earlier orders issued to two similar persons. But in the very notification itself, it has been stated that there are certain qualifications prescribed for appointment of cook. It is further submitted that the Department has got no objection from the petitioners also, when



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they applied for the post of cook and participated in the selection process. Since the appointment of cook is neither a transfer nor a promotion, the petitioners cannot claim it as a matter of right that they should be treated on par with other similarly placed persons and appointment order has to be passed by appointing them as cooks.

12. The petitioners had a grievance that their names were not sponsored through Employment Exchange, as they have already been appointed as Sweepers. Since the notification was given for recruitment of cook, a direction has to be given to the Employment Exchange to sponsor the names of the petitioners for cooks and then, they should be allowed to participate in the process of interview. As on today, there is no fresh notification issued or any other recruitment to the post of cook is pending. So the petitioners cannot claim on par with the other similarly placed persons who have already been appointed as cooks. Now the process of recruitment has been completely changed and even without sponsoring from the Employment Exchange, any one can apply to the post of cook and hence the petitioners cannot claim as a matter of right



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that they should be considered for appointment to the post of cook.

However, the petitioners are at liberty to apply to the post of cook, in case there is any future notification, if they have the prescribed qualification for the post.

13. In view of the above stated reasons, this Writ Petition is Disposed. No costs. consequently, connected miscellaneous petitions are closed.

22.01.2024

Index : Yes /No
Internet : Yes/No
Speaking / Non-speaking
Neutral Citation : Yes / No
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To

- 1.The Secretary,
Backward Classes, Most Backward Classes,
Denotified Communities and Minorities Welfare Department,
Secretariat, Chennai 600 009.
- 2.The Principal Secretary and Commissioner,
Backward Classes, Most Backward Classes,
Welfare Department,
Ezhilagam, Chepauk, Chennai 600 005.



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- 3.The Director,
Directorate of Backward Classes Welfare Department,
Ezhilagam, Chepauk,
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- 4.The District Welfare Officer for Backward
Classes and Minorities, Collectorate Campus,
Ariyalur.
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