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W.P.Nos.29977 & 29982 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.29977 & 29982 of 2022 and
WMP.Nos.29391, 29394 & 29398 of 2022

WP.No.29977 of 2022

1.A.Selvarani
2.A.Inbavalli

... Petitioners

Vs.

- 1.The Principal Chief Secretary to Government,
School Education Department,
Fort St.George, Secretariat,
Chennai 600 009
- 2.The Commissioner,
School Education,
College Road,
Chennai 600 006
- 3.The Chief Educational Officer,
Ranipet District,
Ranipet
- 4.The District Educational Officer,
Ranipet District,
Ranipet 632 005
- 5.The Correspondent,
L.F.C.Girls Higher Secondary School,
Ranipet – 632 401,
Ranipet District

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the



W.P.Nos.29977 & 29982 of 2022

entire records connected with impugned order passed by the 1st respondent vide Letter No.15845 school Education 6 (2) / 2021 - 1 dated 08.12.2021 and quash the same and directing the respondents to upgrade/ conversion of part Time Post of sweeper and Scavenger of the Petitioners as Full Time Sweeper and Scavenger respectively from the initial date of appointment i.e 1.7.1998 and 1.4.2000 with all consequential benefits as per G.O.Ms.No.528 Personnel and Administrative Reforms (Per.F) Department dated 10.10.1988 in the 5th respondent school.

For Petitioners : Mr.S.N.Ravichandran

For Respondents

For R1 to 4 : Mrs.S.Mythreye Chandru,
Special Government Pleader

For R5 : Mr.D.Muthukumar
for M/s.Paul and Paul

WP.No.29982 of 2022

C.Shanthy

... Petitioner

Vs.

- 1.The Principal Chief Secretary to Government,
School Education Department,
Fort St.George, Secretariat,
Chennai 600 009
- 2.The Commissioner,
School Education,
College Road,
Chennai 600 006
- 3.The Chief Educational Officer,
Ranipet District,



W.P.Nos.29977 & 29982 of 2022

- Ranipet
4.The District Educational Officer,
Ranipet District,
Ranipet 632 005
5.The Correspondent,
V.R.V.Girls Higher Secondary School,
Ranipet – 632 401,
Ranipet District

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the entire records connected with impugned order passed by the 1st respondent vide Letter No.15845 school Education 6 (2) / 2021 - 1 dated 08.12.2021 and quash the same and directing the respondents to upgrade/ conversion of part Time Post of sweeper of the Petitioner as Full Time Sweeper from the initial date of appointment i.e 09.01.1995 with all consequential benefits as per G.O.Ms.No.528 Personnel and Administrative Reforms (Per.F) Department dated 10.10.1988 in the 5th respondent school.

For Petitioner : Mr.S.N.Ravichandran

For Respondents
For R1 to 4 : Mrs.S.Mythreye Chandru,
Special Government Pleader

For R5 : Mr.D.Muthukumar
for M/s.Paul and Paul

COMMON ORDER



W.P.Nos.29977 & 29982 of 2022

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These writ petitions have been filed challenging the order passed by the first respondent dated 08.12.2021 thereby rejected the request made by the petitioners to upgrade / conversion of their part time post of Sweeper and Scavenger as Full Time Sweeper and Scavenger from the date of their initial appointment.

2. The fifth respondent schools are aided religious minority institution. In the fifth respondent school in WP.No.29977 of 2022, totally 2808 girl students are studying with 52 teaching and 4 full time non teaching and 2 part time non teaching staffs are sanctioned. In the fifth respondent school in WP.No.29982 of 2022, 1040 girl students are studying with 35 teaching and 5 full time non teaching and one part time non teaching staff are sanctioned. While being so, in the fifth respondent school in WP.No.29977 of 2022, in a vacancy arose due to retirement of an incumbent on 31.05.1998, the first petitioner was appointed as Sweeper in the sanctioned post by following all due procedures. Her appointment as Part Time Sweeper was duly approved by the fourth respondent by its proceedings dated 30.10.1998. Likewise, in another



W.P.Nos.29977 & 29982 of 2022

vacancy arose for the post of Scavenger due to retirement of an incumbent on 31.03.2000, the second petitioner was appointed on 01.04.2000 in the sanctioned post following all due procedures. It was also duly approved by the fourth respondent by its communication dated 31.03.2000. The petitioner in WP.No.29982 of 2022 was appointed in a vacancy arose for the post of Sweeper as on 28.06.1994 due to the death of one, Tmt.Marthal on 28.06.1994 in the sanctioned post by following all due procedures. Her appointment as Part Time Sweeper was also duly approved by the fourth respondent by its proceedings dated 20.09.1995.

2.1 In the fifth respondent school in WP.No.29977 of 2022, there are about 52 class rooms, five labs, two staff rooms in the school. That apart, the school consists of counseling room, PET room, Headmaster room, canteen and playground. There are about 106 closets in the washroom and the petitioners are the only persons in charge of cleanliness of the entire school premises. Though they were appointed as Part Time Sweeper and Scavenger, they were engaged round the clock and their services were indispensable. They were paid only a paltry sum



W.P.Nos.29977 & 29982 of 2022

of Rs.1,335/- per month. The Government issued various orders in GO.Ms.No.241 Personnel and Administrative Reforms Department dated 18.04.1998 and GO.Ms.No.528 Personnel and Administrative Reforms Department dated 10.10.1988 to regularise the services of the basic servants appointed in the regular vacancies on daily wages. Admittedly the petitioners were in the regular vacancies of the fifth respondent school. While being so, one non teaching staff filed writ petition before this Court for regularisation and the same was allowed and confirmed by the Hon'ble Division Bench of this Court. As against the said order, the Government preferred Special Leave Petition before the Hon'ble Supreme Court of India and the same was also dismissed.

2.2 In pursuant to the order passed by this Court, the Government passed order in GO.No.141 dated 19.05.2010 thereby implemented the order and part time employees appointed without sanctioned post in the Government schools were regularised on completion of 10 years of service as full time employees in the time scale. Similarly placed persons were also regularised in various orders passed



W.P.Nos.29977 & 29982 of 2022

by the first respondent. Therefore, the petitioners also filed writ petition before this Court and this Court directed the respondents to bring the post of Scavenger and Sweeper into full time post including the allowances arising therein on completion of their 10 years of service in the part time Scavenger and Sweeper Post by an order dated 22.03.2018. Aggrieved by the same, the respondents filed appeals in WA.No.82 and 769 of 2020. Considering the facts and circumstances of the case, the Hon'ble Division Bench of this Court directed the respondents to consider their claim and pass appropriate orders regularising their services as Full Time employees. Thereafter, the petitioners also submitted detailed representation. Even then, the order was not complied with and as such, the petitioners were constrained to file contempt petition. In the contempt petition, the respondents assured that the case of the petitioners will be considered and on the assurance, contempt petitions were closed. However, the claim of the petitioners were rejected.

3. The learned counsel for the petitioners would submit that the case of the similarly placed persons was already considered by the



W.P.Nos.29977 & 29982 of 2022

Madurai Bench of this Court in WP.(MD).No.7885 of 2013 dated 26.06.2013 thereby directed the respondents to regularise the service in time scale of pay from the date of completion of 10 years of service after verifying the service particulars within a period of four weeks. Aggrieved by the same, the respondents filed writ appeal and the same was also dismissed .

4. Respondents 1 to 4 filed counter and the learned Special Government Pleader submitted that the Government have passed orders to regularise the services of the full time daily wage employees against the sanctioned vacancy and they must have completed 10 years of service as on 01.01.2006 vide GO.(Ms)No.22 Personnel and Administrative Reforms Department dated 28.02.2006. As far as the petitioners are concerned, they were appointed as Part Time Sweeper and Scavenger on consolidated pay. Therefore, the services of the petitioners could not be regularised as per the said order. Thereafter, the Government passed another order in GO.Ms.No.74 Personnel and Administrative Reforms Department dated 27.06.2013 and ordered that the part time employees



W.P.Nos.29977 & 29982 of 2022

are not eligible for regularisation of service.

WEB COPY

4.1 She further submitted that though the writ petitions filed by the petitioners were allowed by this Court with direction to regularise the service of the petitioners on their completion of 10 years of service in the post of Part Time Sweeper and Scavenger and to bring the post into full time Sweeper and Scavenger post with all attendant and consequential benefits, aggrieved by the same, the respondents preferred appeals in the writ appeal Nos.82, 766 and 769 of 2020. By an order dated 23.09.2020, the Hon'ble Division Bench of this Court set aside the order passed by the learned Single Judge and directed the first respondent to bring that order to the notice of the State Government for taking appropriate steps to consider revising the status of such part time employees in Higher Secondary Schools, who are just a mere requirement but continue to be an absolute necessity as in the presence case for more than half a century. Further observed that the State Government should therefore consider transforming the status of such posts, may be keeping in view the nature of function of a scavenger, which in today's context is a necessity keeping



W.P.Nos.29977 & 29982 of 2022

in view the substantial increase in the volume of students in the schools during the past half a century. In pursuant to the said order, the Government passed order in GO.Ms.No.74 Personnel and Administrative Reforms Department dated 27.06.2023. Therefore, the services of the petitioners could not be regularised since they were appointed as Part Time Sweeper and Scavenger.

5. While disposing the writ appeals in W.A.Nos.82 & 769 of 2020, the Hon'ble Division Bench of this Court, by an order dated 23.09.2020, directed the Government to take appropriate decision to consider transforming the status of such posts, may be keeping in view the nature of function of a Scavenger, which in today's context is a necessity keeping in view the substantial increase in the volume of students in the Schools during the past half a century. To imagine an institution to have a Part Time Scavenger in higher secondary institutions that are overflowing with students and to continue such an employee only on part time basis may not be an acceptable state of affairs, but the same being a matter of policy and investigation by the Education Department,



W.P.Nos.29977 & 29982 of 2022

has to be left to take appropriate decision on that score. Therefore, the Hon'ble Division Bench of this Court directed the Government for taking appropriate steps to consider revising the status of such part time employees in higher secondary schools, who are not just a mere requirement, but continue to be an absolute necessity, as in the present case for more than half a century. Thereafter, the School Managements also submitted representations for conversion/upgradation of part time post as full time and regularisation of the post of Sweeper and Scavenger. However, without considering the above direction, the first respondent rejected the claim of the petitioner on the ground that there is no sanctioned full time post. It is contrary to the Government orders which already referred by this Court that the institution with enormous students strength cannot be run by part time sweeper and scavenger post. Despite the nomenclature of the post as part time, the petitioners are working in the school as full time sweeper and scavenger.

6. Further the post of part time sweeper and scavenger were already sanctioned to the fifth respondent School way back to in the year 1967. The petitioners were appointed in the sanctioned post and their



W.P.Nos.29977 & 29982 of 2022

appointments were duly approved by the Educational Authorities.

Therefore, they are now seeking conversion from part time Sweeper and Scavenger as full time Sweeper and Scavenger from the date of their initial appointment. Therefore, G.O.Ms.No.74, Personnel and Administrative Reforms (F) Department, dated 27.06.2013 is not applicable to the case of the petitioners, since the petitioners were appointed in the sanctioned post and their appointments were duly approved and regularised by the Educational Authorities.

7. Further as per G.O.Ms.No.241, Personnel and Administrative Reforms Department, dated 10.10.1988, ordered to regularise the service of basic servants appointed in the regular vacancies on daily wages. Accordingly, part time basic servants appointed in the regular vacancies through employment exchange were regularised from initial date of appointment. Therefore, the petitioners are also entitled for the said benefits, since they were appointed in the regular vacancies and in the sanctioned posts.



W.P.Nos.29977 & 29982 of 2022

WEB COPY

8. The Hon'ble Division Bench of Madurai Bench of this Court, while confirming the order passed by the Hon'ble Single Judge of this Court, in W.A.(MD) No.902 of 2015 dated 24.02.2020, held as follows :

"4. In the present case, the post occupied by the respondent/petitioner is that of Sweeper/Scavenger in a Government Higher Secondary School on part time basis, where the respondent has been continuing for the past 22 years. This Court, even otherwise, cannot imagine a school having thousands of children to be looked after for health and hygiene with the aid of a part time employee, that too, even a single Sweeper. We, therefore, find that the State Government rightly came up with a scheme for regular appointments and even assuming for the sake of argument that G.O.Ms.No.528, should not consequently apply keeping in view the nature of the vacancy or otherwise even, we are not inclined to interfere with the impugned Judgment on the ground that the post of a Sweeper or Scavenger in a Government school is a sine qua non and such post deserves to be made available to an institution keeping in view the nature of the requirement. We, therefore, are not inclined to interfere with the discretion exercised by the learned Single Judge under Article 226 of the Constitution of India, without prejudice to the rights of the State to contest any other case, on the issue of Law, that may be involved therein.

4. The writ appeal is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed."

9. The learned counsel appearing for the fifth respondent



W.P.Nos.29977 & 29982 of 2022

submitted that now the students strength is increased more than 3500 girl students. Therefore, the petitioners are engaged as Sweeper and Scavenger in a full time manner. Therefore, the post of Sweeper and Scavenger in the fifth respondent School is a *sine qua non* and such post deserves to be made available to an institution keeping in view the nature of the requirement.

10. In view of the above, the impugned order cannot be sustained and is liable to be quashed. Accordingly, the impugned order dated 08.12.2021 on the file of the first respondent is hereby quashed. The respondents 1 to 4 are directed to convert the part time post of Sweeper and Scavenger of the petitioners as full time Sweeper and Scavenger from the date of their initial appointment i.e., 01.07.1998 and 01.04.2000 & 09.01.1995 respectively with all consequential benefits within a period of eight (8) weeks from the date of receipt of a copy of this order.

11. In the result, both the writ petitions stand allowed. Consequently, connected miscellaneous petitions are closed. There shall



W.P.Nos.29977 & 29982 of 2022

be no order as to costs.

11.03.2024

Neutral citation: Yes/No

Index: Yes/No

(2/2)

Speaking/Non-speaking order

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G.K.ILANTHIRAIYAN, J.

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Fort St.George, Secretariat,
Chennai 600 009
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W.P.Nos.29977 & 29982 of 2022

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(2/2)