



W.P.(MD)No.3320 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.02.2025

CORAM

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.(MD)No.3320 of 2025

and

W.M.P(MD)No.2327 of 2025

1.S.Vellammal

2.P.Muthukumar

3.M.Ammukutty

... Petitioners

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Backward Class, Most Backward Class
Minorities Welfare Department,
Secretariat,
Chennai.

2.The Commissioner,
Most Backward & De-notified Communities Welfare,
Chennai 600 005.

3.The Joint Director,
Kallar Reclamation,
Old Ramanathapuram Collectorate Campus,
Madurai,
Madurai District.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the third respondent in his proceedings in ந.க.எண்.எச்.10/12432/2024, dated 17.12.2024 and quash the same as illegal and consequentially to direct the respondents to grant regular time scale of pay in the cadre of Sanitary Worker/Sweeper on par with the existing Sanitary worker / Sweeper who are receiving regular Time Scale of pay of Rs.4,800-10,000+ G.P. Rs.1300/- in the light of common order made in WP(MD)Nos.22370 and 22392 of 2021 dated 17.11.2022 and in the light of G.O.Ms.No.29 Backward Class, Most Backward Class Minorities Welfare Department, dated 05.03.2024 within the period that may be stipulated by this Court.

For Petitioner : Mr.C.Venkatesh Kumar
For M/s.Ajmal Associates

For Respondents : Mr.T.Amjad Khan
Government Advocate

ORDER

The present Writ Petition has been challenging the order passed by the third respondent, dated 17.12.2024 and consequently directing the respondents to grant regular time scale of pay in the cadre of Sanitary Worker/Sweeper on par with the existing Sanitary worker/Sweeper who are receiving regular Time Scale of pay of Rs.4,800-10,000+ G.P. Rs.1300/- in the light of common order made in WP(MD)Nos.22370 and 22392 of 2021 dated 17.11.2022 and in the



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light of G.O.Ms.No.29 Backward Class, Most Backward Class Minorities

Welfare Department, dated 05.03.2024.

2. The case of the petitioners is that they are working as Sanitary Worker/Sweeper in Government Kallar Girls Hostel, Chekkanorrani, Madurai District. Their service is not in dispute as their service has already been regularised. However, they are getting only special time scale of pay, the petitioners wanted to be placed in regular time scale of pay, their request was rejected by the impugned order. Aggrieved by the same, the present writ petition has been filed.

3. The learned Government Advocate appearing for the respondents would submit that the order impugned in this writ petition does not call for any interference. The learned Government Advocate further contends that the petitioners are not entitled for the relief on the ground that they are working in the hostel. In the earlier case, the sweepers working in the schools has been considered. Accordingly, he submit that the common order passed by this Court in W.P(MD)Nos.22370 and 22392 of 2021, dated 17.11.2022 is not applicable to the petitioners.



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4. This Court carefully perused the materials available on record and considered the submissions of the respective counsels. In the considered opinion of this Court the issue involved in this writ petition is no longer *res-integra*.

5. The contention of the learned Government Advocate is that the petitioners are working in the school hostel as such they are not entitled. But in the considered opinion of this Court, the petitioners are also doing the same work as sweeper in the hostel, like the sweepers working in the schools. Hence, they cannot be treated differently. In our considered view the common order passed by this Court stated supra relied on by the learned counsel for the petitioners is squarely applicable to the present case. The relevant portion of the said order is extracted herein under:

“5.I carefully considered the rival contentions and went through the materials on record. In fact, Scavengers working in the education department sought similar relief and filed W.P.(MD)No. 17663 of 2014. The said writ petition was allowed by me on 25.01.2018 in the following terms:-

“8. This Court is of the view that the principle of equal pay for equal work enshrined in Article 14 and 16 of Constitution of India is too sacred to be defeated by invoking the principle of estoppel. The Hon'ble Supreme Court of India in decision reported in (2017) 1 SCC 148 – State of



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Punjab and others vs. Jagjit Singh and others held that even temporary employees will be entitled to draw wages at the minimum of the pay scale as extended to the regular employees holding the same post. The members of the petitioner's Association are discharging the duty of Scavengers in the School Education Department but other Scavengers working in the very same department have been placed in the higher time scale of pay. This is patently discriminatory. When two employees are doing the same work, both will have to be paid the very same salary. The question of waiver will not arise in these cases. Fundamental rights cannot be waived. It has held that the right of equal pay for equal work is a fundamental right. Article 39(d) of the Constitution of India states that the State shall direct its policy towards securing that there is equal pay for equal work for both men and women. Though this directive principle of State policy is more in the context of gender equity, the philosophy behind it can be applied to uphold the general principle of equal pay for equal work. This Court considering a similar issue in the case of Colleges struck down the discriminatory approach of the department. Such an order was passed on 19.09.2014 in W.P. No.7884 of 2013. Excepting that the petitioners in W.P.(MD).No. 7884 of 2013 are working in Colleges as Scavengers and the members of the petitioner's Association are working as Scavengers in schools, there is no other difference. The case of the members of the petitioner's Association therefore deserves to be allowed.

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



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this Revision and placement in the higher pay scale notionally from the date of their appointment and with 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.”

6.The department filed W.A.(MD)No.1584 of 2018. The writ appeal was dismissed on 29.01.2019 in the following terms:-

“4. The issue raised in this Writ Petition is no longer res integra, in view of 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].

5. There is no dispute that the Members of the Association are working as Scavengers. The Government sanctioned time scale of pay to the Scavengers appointed to work in various Government departments and in the High Court. Those Scavengers are receiving a salary of Rs. 18,843/-. However, the members of the Association were given the salary in the scale of pay of Rs. 1,300-3,000 with the Grade Pay of Rs.300/-. The Scavengers working in the other departments including the Education Department were given the pay scale of Rs.4,800 - 10,000 + Grade Pay of Rs.1,300/-. The pay structure is per se discriminatory. It violates the principle of 'Equal Pay for Equal Work'. The learned Single Judge was, therefore, justified in quashing the particular clause and directing the appellant to sanction the time scale of pay to the Scavengers, taking into account the salary of similarly placed scavengers working under the State. We do not find any error or illegality in the said order warranting interference.”

The Hon'ble Supreme Court also declined to interfere. The reasons set out in the aforesaid order are applicable to the present case also. It is relevant to note that the said order was also implemented by issuing G.O.(Ms) No.50, School Education Department, dated 08.03.2019.



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7.The petitioners herein cannot be treated otherwise. They are also doing the very same work. Merely because they are serving in Kallar Reclamation Schools which is not directly under the education department, a different yardstick cannot be applied.”

6. By following the said order, this Court intends to allow the writ petition to meet the ends of justice. Accordingly, this writ petition is allowed with the following directions:

1. The impugned order passed by the third respondent in his proceedings in ந.க.எண்.எச்.10/12432/2024, dated 17.12.2024 is hereby set aside.

2. The respondents are directed to place the petitioners in regular time scale of pay from the date when their service was regularised.

3. It is made clear that this will be only for notional purpose and monetary benefits be given effect from the date when the impugned order came to be passed.

7. No costs. Consequently, the connected miscellaneous petition is closed.

05.02.2025

NCC:yes/no
Index:yes/no
Internet:yes/no
Sn



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- 1.The Secretary to Government,
Backward Class, Most Backward Class
Minorities Welfare Department,
Secretariat,
Chennai.
- 2.The Commissioner,
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Chennai 600 005.
- 3.The Joint Director,
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BATTU DEVANAND, J.

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