

W.P.(MD)No.11143 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 22.04.2025

CORAM

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.(MD)No.11143 of 2025

1.M.Nachimuthu Velu

2.M.Anjali

3.V.Velmalal

4.Alagaammal

5.M.Alagar

... Petitioners

Vs.

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

2.The Commissioner/Director,
Backward Class Welfare Department,
Secretariat, Chennai.

3.The District Backward Classes
and Minorities Welfare Officer,
Collectorate Campus,
Madurai,
Madurai District.

... Respondents



W.P.(MD)No.11143 of 2025

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondents to regularise the services of the petitioners and to grant regular time scale of pay in the cadre of scavenger on par with the existing Scavengers who are receiving regular time scale of pay i.e. Rs.4800-10000-GP Rs.1300/- in the light of order made in W.P(MD)No.22370 and 22392 of 2021 and consequent order passed in WP(MD)No.3322/2025 dated 05.02.2025 by this Court within period that may be stipulated by this Court.

For Petitioner : M/s.A.Rajini

For Respondents : Mr.D.Sachi Kumar
Additional Government Pleader

ORDER

This writ petition is filed seeking a writ of Mandamus to direct the respondents to regularize the services of the petitioners and to grant regular time scale of pay in the cadre of scavenger on par with the existing Scavengers who are receiving regular time scale of pay i.e. Rs.4800-10000-GP Rs.1300/- in the light of order made in W.P(MD)No.22370 and 22392 of 2021 and consequent order passed in WP(MD)No.3322/2025 dated 05.02.2025 by this Court within a time frame.

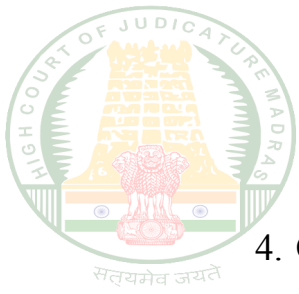
2. The case of the petitioners is that they are appointed as Scavengers in the third respondent hostel in the year 2013 through the proceedings of the third



W.P.(MD)No.11143 of 2025

respondent, dated 10.09.2013. Initially, they were paid consolidated pay at the rate of Rs.2,000/- per month. The service of similarly placed persons, who are appointed in various departments like School Education Department were regularized after three years through proceedings, dated 20.03.2021. They have been granted special time scale of pay.

3.The contention of the learned counsel for the petitioners is that the petitioners are doing the same work as Sweepers in the third respondent hostel like the sweepers in the School. Hence, they cannot treat differently. The learned counsel for the petitioners further contends that the petitioners submitted several representations to consider the request to regularize their services and to place them in regular time scale of pay, but it was not considered. The learned counsel for the petitioners contends that this Court on several occasions has considered the same issue and pass orders in favour of the petitioners therein, who are similarly situated persons and who are working as Scavengers and requested to pass the same order. The learned counsel for the petitioners has drawn the attention of this Court to the order passed by this Court in W.P(MD)No.3322 of 2025, dated 05.02.2025.



W.P.(MD)No.11143 of 2025

4. On perusal of the said order, it appears that the said writ petition has been filed challenging the rejection order passed by the respondents therein.

But, while allowing the said writ petition, this Court has considered the entire issue comprehensively in the light of the earlier orders passed by this Court in W.P(MD)Nos.22370 and 22392 of 2021, dated 17.11.2022. In the light of the earlier orders, this Court directed the respondents therein to place the petitioners in regular time scale of pay from when their services were regularized. The relevant portion of the said order is extracted herein under:

“5. The contention of the learned Government Advocate is that the petitioner is working in the school hostel as such he is not entitled. But in the considered opinion of this Court, the petitioner is 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 petitioner 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 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



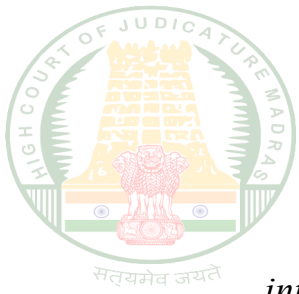
W.P.(MD)No.11143 of 2025

WEB COPY

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 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:-



W.P.(MD)No.11143 of 2025

WEB COPY

“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].

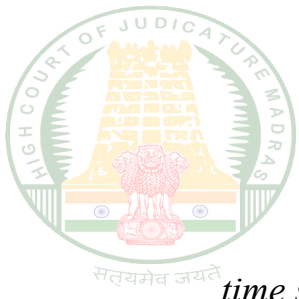
5. There is no dispute that the Members of the Association are working as Scavengers. The Government sanctioned time scale of pay to the Scavengers appointed to work in various Government departments and in the High Court. Those Scavengers are receiving a salary of Rs.18,843/-. However, the members of 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.

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.



W.P.(MD)No.11143 of 2025

WEB COPY

2. *The respondents are directed to place the petitioner in regular time scale of pay from the date when his 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.*

5. In view of the order passed by this Court stated supra, in the considered opinion of this Court, the issue involved in the present writ petition is no longer *res integra* and the petitioners are entitled for the relief sought in this writ petition.

6. Accordingly, this writ petition is allowed with the following directions:

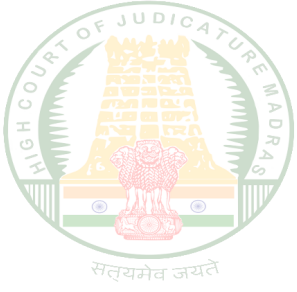
(i) The respondents are directed to place the petitioners in regular time scale of pay from the date when their services were regularized.

(ii) The respondents shall complete the said exercise and pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order.

No costs.

22.04.2025

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



W.P.(MD)No.11143 of 2025

WEB **To:** PY

- 1.The Principal Secretary to Government,
Backward Class, Most Backward Class,
Minorities Welfare Department,
Secretariat, Chennai.
- 2.The Commissioner/Director,
Backward Class Welfare Department,
Secretariat, Chennai.
- 3.The District Backward Classes
and Minorities Welfare Officer,
Collectorate Campus,
Madurai,
Madurai District.



WEB COPY



W.P.(MD)No.11143 of 2025

BATTU DEVANAND, J.

Sn

W.P.(MD)No.11143 of 2025

22.04.2025