



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.01.2025

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MS.JUSTICE R. POORNIMA

W.A(MD)No.1357 of 2019

and

C.M.P(MD)Nos.11402 of 2019 & 2283 of 2022

- 1.The State represented by
The Secretary,
Youth Welfare and Sports Development
(YW) Department,
Fort St.George, Chennai.
 - 2.The Director,
Directorate of National Cadet Corps for Tamil Nadu,
Pondichery and Andaman Nichobar,
Fort St.George, Chennai.
 - 3.The Group Commissioner,
NCC Group Head Quarters,
No.86/1, P.T.Rajan Road,
Madurai.
 - 4.The Group Commander,
NCC Group Head Quarters,
Trichy – 1.
- ... Appellants /
Respondents
- Vs.
- 1.S.Muthu
 - 2.M.Mariyappan
- ... Respondents /
Petitioners



Prayer: Writ Appeal filed under Clause 15 of Letters Patent Act pleased to set aside the order dated 26.03.2019 passed in W.P(MD)No.2470 of 2018 and allow this Writ Appeal.

For Appellants : Mr.K.S.Selvaganesan
Additional Government Pleader

For Respondents : Mr.B.Rajesh Saravanan
for R.1 & R.2

JUDGMENT

(Judgment of the Court was delivered by G.R.SWAMINATHAN, J.)

This Writ Appeal is directed against the order dated 26.03.2019 made in W.P(MD)No.2470 of 2018. The said writ petition was filed by the respondents herein, namely, S.Muthu and M.Mariyappan. The Writ Petition was disposed of with a direction to the Government to pass appropriate order with regard to fixing the writ petitioners' scale of pay and paying the arrears.

2.The stand of the appellants is that before passing the order impugned in this Writ Appeal, the learned Single Judge failed to take into consideration the terms of G.O(Ms)No.79 Youth Welfare and Sports Development Department dated 19.12.2012.



3.The issue raised in this Writ Appeal is no longer *res integra*.

Questioning similar orders passed in the Principal Seat, the Government filed W.A Nos.2538 and 2541 of 2019. The Writ Appeals were disposed of on 30.11.2023. Para 10 to 15 of the said order read as follows:

“10. In fact the issue raised in these appeals have already been raised in the intra-court appeals in W.A.(MD).Nos.1155 to 1159 of 2014. Those writ appeals were disposed of by a common order passed by the Division Bench of this Court dated 28.01.2016, wherein exactly this issue has been considered.

11. The reason being that, under G.O.Ms.No.79, dated 19.12.2012, which in fact was issued pursuant to G.O.Ms.No.385, these two respondents/writ petitioners along with other such persons who are also similarly placed as part time sweepers had been considered by the Government and they had been brought under the special time scale of pay. The relevant portion of the order in G.O.Ms.No.79 reads thus:

“6. The Government after careful examination accept the proposal of the Deputy Director General, National Cadet Corps and accord permission to sanction to create 11 posts of Sweeper in Special Time Scale of Pay of Rs.1,300 – 3000 + G.P 300/- so as to absorb the following 11(Eleven) Part Time Sweepers with effect from the date of this order:-

1. Tmt. C.Ravanamma



2. *Thiru. N.Jayaseelan*
 3. *Thiru. N.Mariappan*
 4. *Tmt.A.Mallika*
 5. *Thiru. S.Muthu*
 6. *Tmt.M.Sornabai*
 7. *Thiru G.Madasamy*
 8. *Thiru K.Amavasai*
 9. *Tmt. G.Thamayanthi*
 10. *Thiru. R.Mariappan*
 11. *Thiru Kanniappan*
- on the post sanctioned above.*

12. This has been considered by the Division Bench in its order dated 28.01.2016 in the following passages:

“5. As seen from what is extracted above, the learned Judge allowed the writ petitions of the respondents on the sole ground that the issue was covered by the decision of a Division Bench of this Court, dated 02.03.2011, passed in W.A.(MD).No.273 of 2011. A careful look at the order, dated 02.03.2011, passed in W.A.(MD).No.273 of 2011 would show that the same was passed on the basis of a Government Order issued in G.O.Ms.No.125, Municipal Administration and Water Supply Department, dated 27.05.1999. But, the said order was actually confined to cases of persons appointed in the Municipal Administration and Water Supply Department and who had put in long years of service on full time



basis. W.A.(MD)No.273 of 2011 arose completely under different circumstances. The Government itself was agreeable in that case to regularize the services of the contesting respondents in W.A.(MD).No.273 of 2011 with effect from 01.03.2006, on the basis of G.O.Ms.No.21, Municipal Administration and Water Supply Department, dated 23.02.2006. But, the individuals claimed that they are entitled to regularization from the date of appointment, irrespective of a band order that was in force under G.O.Ms.No.463, Finance Department, dated 23.11.2001.

6. In other words, the issue that arose in W.A. (MD).No.273 of 2011 was completely different from the issue raised in the writ petitions filed by the respondents. Even if the issues are one and the same, much water has flown under the bridge, thereafter.

7. As a matter of fact, the respondents were admittedly appointed as part-time sweepers. The question whether part-time employees are entitled to be regularized has already been answered by the Supreme by judgment, dated 21.02.2014, in Appeal Nos.2726 to 2729 of 2014, reported in Secretary to Government Vs. R.Govindaswamy – CDJ 2014 SC 146

8. The respondents herein pitched their claim for regularization on the basis of continuous service for more than 10 years. It is the very same argument that was rejected by the Supreme Court in Secretary to



Government Vs. R.Govindaswamy.

9. In State of Tamil Nadu Vs. M.Seeniammal – 2014 (5) CTC 474, a Division Bench of this Court rejected the claims of persons who are similarly placed like the respondents herein. Therefore, the decision of the Supreme in Secretary to Government Vs. R.Govindaswamy and the latest decision of a Division Bench of this Court in State of Tamil Nadu Vs. M.Seeniammal now hold the field and the order of the learned Judge cannot be sustained.

10. There is also one more additional reason. The respondents were appointed as part-time sweepers in the Directorate of National Cadet Corps on consolidated pay. By G.O.Ms.No.385, Finance Department, dated 01.10.2010, the Government directed sweepers working on daily wage basis and who have completed three years of service to be brought into regular time scale of pay. Based upon the said order, the Government had already issued G.O.Ms.No.79, Youth Welfare and Sports Development Department, dated 19.12.2012, sanctioning the creation of 11 posts of sweepers in Special time scale of pay so as to absorb 11 persons. The five respondent in these five appeals are included in the said list. In other words, by G.O.Ms.No.79, Youth Welfare and Sports Development Department, dated 19.12.2012, the respondents herein have been absorbed into regular time scale of pay with effect from the date of the order. This



itself is a concession granted to the respondents, despite the fact that the respondents were only part-time sweepers.”

13. Therefore, it has been discussed in extenso by the Division Bench in the said judgment as to the right of the part time sweepers and also by taking note of the relevant Government Orders including the said Government Orders i.e., G.O.Ms.No.385, Finance (Pay Cell), Department, dated 01.10.2010 as well as G.O.Ms.No.79, Youth Welfare and Sports Development Department, dated 19.12.2012 and had ultimately held that the respondents in those writ appeals, who were the writ petitioners in the other batch of cases, who all are similarly placed like the respondents/writ petitioners as part time sweepers and had been covered under the G.O.Ms.No.79 are not entitled for any other relief other than what has been given under G.O.Ms.No.79 and accordingly, the additional relief that has been given by the Writ Court was set aside and the writ appeals were allowed by the said judgment of the Division Bench dated 28.01.2016.

14. We are in complete agreement with the said view expressed by the said Division Bench, therefore, the issue raised in these appeals are fully covered with the said issue.

15. Resultantly, the following orders are passed in these appeals:



? That the order passed by the learned Judge, which is impugned herein is set aside. As a sequel, what was the benefit that has been conferred on these respondents/writ petitioners by virtue of G.O.Ms.No.79, Youth Welfare and Sports Development Department, dated 19.12.2012 shall be protected and based on which whatever service benefits for which they are entitled to can be calculated and be paid to them, if the same has not already been calculated and paid to them.

With these observations and directions, these writ appeals are ordered accordingly. No costs. Connected miscellaneous petitions are closed.”

Respectfully following the said order, the order impugned in this Writ Appeal is set aside and this Writ Appeal is also disposed of on the same lines as that of W.A Nos.2538 and 2541 of 2019 dated 30.11.2023. No costs.

[G.R.S., J.] [R.P., J.]
22.01.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
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