



W.P.(MD)No.26596 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.04.2025

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THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.(MD)No.26596 of 2024

and

W.M.P(MD)No.22556 of 2024

Chinnadurai

... Petitioner

Vs.

1.The Additional Chief Secretary to the Government,
Finance Department,
Secretariat,
Fort St. George,
Chennai-600 009.

2. The Principal Secretary to the Government,
Backward Classes, Most Backward Classes,
Denotified Communities and Minorities Welfare Department,
Secretariat, Chennai-600 009.

3. The Director,
Directorate of Backward Classes Welfare,
Ezhilagam, Chepauk, Chennai-600 005.

4. The District Backward Classes and Minorities Welfare Officer,
O/o.The District Backward Classes and Minorities Welfare Office,
Thiruchirappalli.

... 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 in Na.Ka.No.Pa1/8071/2024 dated 16.05.2024 on the file of the Respondent No.4 and quash the same as illegal and consequently for a direction, directing the Respondents to revise the scale of pay of the petitioner along with consequential monetary benefits and arrears, on par with other similarly placed employees (Sweepers) working in the School Education Department, Police Department, Medical Department, Judicial Department within the time stipulated by this court.

For Petitioner : Mr.G.Karthik

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

ORDER

The present Writ Petition has been challenging the order passed by the fourth respondent, dated 16.05.2024 and consequently directing the respondents to revise the scale of pay and to grant regular time scale of pay in the cadre of Sanitary Worker/Sweeper on par with the existing Sanitary worker/Sweeper who are working in the School Education Department, Police Department, Medical Department, Judicial Department.



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2. The case of the petitioner is that he is working as Sanitary Worker/Sweeper in Government College Students Hostel in Cantonment, Thiruchirapalli District. The petitioner's service is not in dispute as his service has already been regularised. However, he is getting only special time scale of pay, the petitioner wanted to be placed in regular time scale of pay, his request was rejected by the impugned order. Aggrieved by the same, the present writ petition has been filed.

3. The learned Additional Government Pleader appearing for the respondents would submit that the order impugned in this writ petition does not call for any interference. The learned Additional Government Pleader further contends that the petitioner is not entitled for the relief on the ground that he is 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 petitioner.



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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 Additional Government Pleader 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 college students hostel, like the sweepers working in the schools. Hence, he 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



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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 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.



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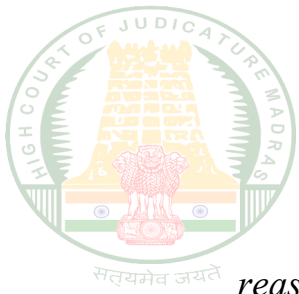
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1,300/- from the date of their appointment. The members of the petitioner's Association will be entitled to the benefit of this Revision and placement in the higher pay scale notionally from the date of their appointment and with monetary effect from 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:-

“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.”



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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:

- i. The impugned order passed by the fourth respondent in his proceedings in Na.Ka.No.Pa1/8071/2024 dated 16.05.2024 is hereby set aside.
- ii. The respondents are directed to place the petitioner in regular time scale of pay from the date when his service was regularised.
- iii. 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.



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

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NCC:yes/no
Index:yes/no
Internet:yes/no
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2. The Principal Secretary to the Government,
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Denotified Communities and Minorities Welfare Department,
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O/o.The District Backward Classes and Minorities Welfare Office,
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BATTU DEVANAND, J.

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