

W.A.(MD)No.341 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 27.03.2025

CORAM:

**THE HONOURABLE MRS.JUSTICE J. NISHA BANU
and
THE HONOURABLE MRS.JUSTICE S.SRIMATHY**

W.A(MD)No.341 of 2024

and

C.M.P.(MD)No.3145 of 2024

1.The State of Tamil Nadu,
Represented by its Secretary,
Department of School Education,
Fort St. George, Chennai – 600 009.

2.The Director of School Education,
College Road, Chennai – 600 006.

3.The Chief Educational Officer,
Kanyakumari District,
Nagercoil-629 001.

4.The District Educational Officer,
Thuckalay,
Kanyakumari District.

... Appellants

Vs.

1.N.Bai

2.The Secretary,
Devaswom High School,
Thirparappu-629 161,
Kanyakumari District.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent against the order of this Court in W.P.(MD)No.18192 of 2019, dated 25.08.2023.



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W.A.(MD)No.341 of 2024

For Appellants :Mr.J.Ashok
Additional Government Pleader
For R1 :Mr.S.Xavier Rajini
For R2 :Mr.R.Shankar Ganesh

JUDGMENT

(Judgment of the Court was delivered by **S.SRIMATHY, J.**)

This writ appeal is filed by the respondents 1 to 4 in the writ petition challenging the order passed in W.P.(MD)No.18192 of 2019, dated 25.08.2023.

2.The writ petition was filed for issuance of a Writ of Mandamus, to direct the respondents to regularize the petitioner's service as Scavenger in the time scale of pay from the date of completion of ten years of service, i.e., 23.06.1995, in the 5th respondent school and disburse all monetary benefits to the petitioner.

3. The brief facts as stated in the writ petition are that initially the writ petitioner was appointed as Scavenger (part time) on 24.06.1985 in Devaswom High School, Thirparappu, Kanyakumari District, which is a recognized aided private school and the appointment was made as per employment seniority and after conducting proper selection process. The



W.A.(MD)No.341 of 2024

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government regularized the service of various temporary employees on completion of ten years of service as per G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006. The writ petitioner requested the appellants to regularize her service from 09.01.1999 which is after completion of ten years but no orders were passed. The writ petitioner repeatedly submitted representations to the respondent school and the school had also submitted a proposal in January 2019. But the official respondents did not take any action. Hence, the writ petition was filed.

4. The District Educational Officer had filed counter affidavit wherein it is stated that the writ petitioner was appointed as part time Scavenger and the work is only for two hours per day. Since the writ petitioner was not engaged in any full-time employment, she is not entitled to regularization as per terms in G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006.

5. The contention of the writ petitioner is that she was appointed in a sanctioned post through appointment order, dated 24.06.1985. Even though the writ petitioner was appointed as part time Scavenger, her services were utilized for all other services from morning to evening like regular employees. Further, the



W.A.(MD)No.341 of 2024

WEB COPY

respondents had regularized 12 other part time employees in the time scale of pay and had disbursed monetary benefits, vide G.O.(3D)No.33, School Education (R1) Department, dated 20.03.2012. Further, 618 part time employees were regularized vide G.O.Ms.No.111, School Education (R1) Department, dated 09.05.2012, from the date of completion of ten years of service. Hence, if it is declined to writ petitioner, the same would amount to discrimination. Further, G.O.Ms.No.74, Personnel and Administrative Reforms (F) Department, dated 27.06.2013, was issued indicating that the services of those who completed 10 years of service on or after 01.01.2006 will not be regularized. Further it was contended by the writ petitioner that the said government order was not implemented to the persons working in the schools, hence the respondents have a misconception that G.O.Ms.No.74, Personnel and Administrative Reforms (F) Department, dated 27.06.2013, imposed a condition that no person should be regularized. Hence the appellants did not consider the writ petitioner's claim and the same is erroneous.

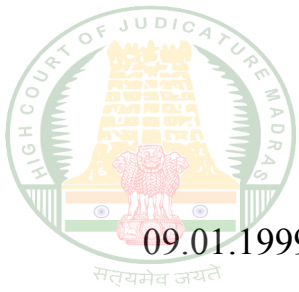
6. The Writ Court has recorded the objection of the government that part-time employees are not entitled to regularization under G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006 and the full-time daily wages employees alone were regularized against the regular



W.A.(MD)No.341 of 2024

vacancy against the sanctioned cadre strength. Since the writ petitioner was appointed as part time Scavenger, she is not entitled to regularization.

7. The Writ Court held even though the writ petitioner was appointed as part time Scavenger from 26.06.1985, the writ petitioner has completed 30 years of service until her superannuation and G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006, is applicable to part time employees also. The appointment was also approved by the education authorities. In the judgment rendered in W.A.(MD)No.93 of 2018, dated 27.03.2018 in the case of **Director of Elementary Education and Others vs. Rani**, it is held that in a sanctioned post, there cannot be any temporary employment without approval. Hence, there cannot be any part time employees and all along it was treated as full time employment and she had sufficient work for the whole day. In the case of **Secretary to Government, Commercial Taxes and Registration Department, Secretariat and Another Vs. A.Singamuthu** reported in **AIR 2017 SC 1304**, it was held that the part time employees will not entitled to any regularization particularly when they have not worked in sanctioned posts. Therefore, the Writ Court held if the writ petitioner is appointed against sanctioned post, she cannot be treated as part time employment. Therefore, the Writ Court directed to regularize from date of completion of ten years, i.e.,



W.A.(MD)No.341 of 2024

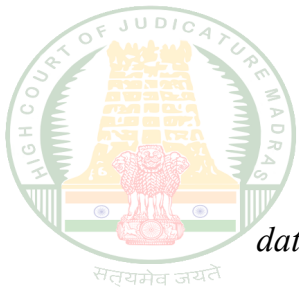
09.01.1999 and to disburse the benefits. Aggrieved over the same, the present
WEB appeal is preferred by the government.

8.Heard Mr.J.Ashok, the learned Additional Government Pleader,
Mr.S.Xavier Rajini, the learned Counsel appearing for the 1st respondent and
Mr.R.Shankar Ganesh, the learned Counsel appearing for the 2nd respondent and
perused the records.

9. The 1st contention of the appellants is that G.O.Ms.No.22,
Personnel and Administrative Reforms (F) Department, dated 28.02.2006, is not
applicable to part time employees. This is clarified by the subsequent G.O.Ms.No.
74, Personnel and Administrative Reforms (F) Department, dated 27.06.2013,
wherein it is clarified that G.O.Ms.No.22, Personnel and Administrative Reforms
(F) Department, dated 28.02.2006 is issued only for full time employees.
Therefore, the writ petitioner / 1st respondent herein cannot claim regularization
being a part time employee. The G.O.Ms.No.22 is extracted hereunder:

*“ABSTRACT Public Services Employees working on daily wages-
Bringing into regular establishment on completion of ten years of
service as on 01.01.2006-Orders issued.*

G.O. Ms. No.22 Personnel and Administrative Reforms (F) Department



W.A.(MD)No.341 of 2024

dated 28.02.2006

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ORDER:

The Hon'ble Chief Minister had announced during the Tamil Nadu Government Officials Union and Government Servants and Teachers Associations General Conference held on 08.02.2006, that the services of employees working in various Government Departments on daily wages basis who have completed more than 10 years of service as on 01.01.2006 will be regularized.

2. Based on the announcement made by the Hon'ble Chief Minister on 08.02.2006, the Government direct that the services of the daily wages employees working in all Government Departments who have rendered 10 years of service as on 01.01.2006 be regularized by appointing them in the time scale of pay of the post in accordance with the service conditions prescribed for the post concerned, subject to their being otherwise qualified for the post.

3. The Departments of Secretariat may therefore, be directed to pursue action to regularize the services of the daily wages employees working in all Government Departments, who have rendered 10 years of service as on 01.01.2006 as ordered in para 2 above in consultation with the respective Heads of Departments wherever necessary. In special cases wherein relaxation of rules is required proposal shall be sent to Government.

4. This order issues with the concurrence of Finance Department vide its U.O. No.985/FS/P/2006 dated 28.02.2006."

10. On perusal of G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006, it is seen that there is no word as



“part time or full-time employment”. However, when the part time employees

started claiming regularization and obtained Court orders, under the fear of contempt petitions, the government regularized some of the part time employees and issued government orders. The government realized the mistake and rectified the same in G.O.Ms.No.74, Personnel and Administrative Reforms (F) Department, dated 27.06.2013 and the relevant portion of the said G.O. is culled out hereunder:

“6) In supersession of the orders issued in the Government Order read above, the Government now issue revised orders on regularization of services of full-time daily wage employees working in all Government departments as detailed below:

(i) This Order shall be deemed to have been come into force with retrospective effect from 01.01.2006.

(ii) The services of the full-time daily wage employees who were initially appointed on full time basis in consultation with the Employment Exchange to discharge the function of the post in the Tamil Nadu Basic Service and complete 10 (ten) years of service as on 01.01.2006 shall be regularized against regular vacancies in the sanctioned cadre strength.

(iii) In cases of relaxation of service rules, the service rule relating to the educational qualification and mode of recruitment shall not be relaxed.

(iv) In cases, where relaxation of rules are involved, monetary benefit shall be allowed with effect from the date of issue of orders as per Rule 23 (a)(ii) of the General Rules for Tamil Nadu State and Subordinate Services;

(v) In cases where relaxation of rules are not involved, monetary benefit



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shall be allowed with effect from the date of regularisation;

(vi) The part-time and casual employees are not entitled to the concession referred to at para (ii) above;

(vii) The services of the full time daily wage employees who have completed 10 years of service after 01.01.2006 shall not be regularized;

(viii) All the appointing authorities should adhere to the above instructions scrupulously in future. Failing which, it will be viewed seriously and necessary disciplinary action will be initiated as per rules against the person who is responsible for the said lapses. All the Heads of Departments are directed to ensure that all the above said instructions are followed without fail and lapses if any found, responsibility will be fixed against them;

(ix) All the proposals for regularization of the services of full time daily wage employees should be sent to the Government even in cases where relaxation of rules are not involved. In G.O. Ms. No.74, it was thus, made clear that the part-time employees are not entitled for regularization and that full-time daily wage employees, who had completed ten years of service as on 01.01.2006 shall be regularized against regular vacancies in the sanctioned post. It was also made clear that the services of daily wage employees who have completed ten years of service after 01.01.2006 are not entitled for regularization.”

11. After perusing the G.O.Ms.No.74, this Court is of the considered opinion that the Writ Court is incorrect in stating that G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006, is applicable to part time employees also, since it has been categorically clarified in G.O.Ms.No.



74 that the full time employees alone is entitled to regularisation. The G.O. further

states that even full time employees are not entitled to regularisation if they had completed 10 years **after 01.01.2006**. It is pertinent to mention that the G.O.Ms.No.74 states in more than one place that the part time employees are not entitled to regularisation, to be specific under clause (vi) and (ix).

12. It is further seen that the G.O.Ms.No.74 states that the full-time employees shall be appointed in the “regular vacancies in the sanctioned cadre strength”. Therefore, it is necessary to see the cadre strength was sanctioned in the said school. The non-teaching staffs are sanctioned to the schools through G.O.Ms.No.583 School and Public Health Department dated 23.04.1966 and the relevant portion of the G.O. is culled out hereunder:

Categories of Non-Teaching Staff	Number Strength			
	Below 250	More than 250 but below 1000	More than 1000 but below 1500	More than 1500
Clerks	Nil	Nil	2	3
Librarian or Clerk for Library	Nil	1	Nil	Nil
Attenders for Office	1	1	1	1
Peons	1	1	2	3
Watchman	1	1	1	1
Waterman	-	-	-	-
Gardener Cum Sweeper	-	-	-	-
Gardener	-	-	-	-
Sweeper	1 part time	1 part time	1 part time	1
Scavengers	1 part time	1 part time	1 part time	1



W.A.(MD)No.341 of 2024

WEB

13. All these years the government was following the G.O.Ms.No. 583 for granting non-teaching posts and it is pertinent to state that the said G.O. was issued as early as 1966. Even in the aforesaid G.O. the post of Waterman, Gardener-Cum-Sweeper, Gardener posts are not granted to any schools as early as 1966 itself. **The sweeper and scavengers were granted as part time only.** The 2nd respondent school is a private aided non-minority school and the sanctioned post of Scavenger is only **“part time”** and there is no sanctioned post of full time Scavenger at all in the said school.

14. Further, nearly after 52 years the government had taken a policy decision to modify the staff fixation for non-teaching staffs through G.O.Ms.No.238 School Education Department dated 13.11.2018 wherein there is no post of sweeper or scavenger since the same was directed to be out sourced. The non-teaching staff strength for the schools from 13.11.2018 is detailed below:

Categories of Non-Teaching Staff	Students Strength			
	Until 250	From 251 to 1000	More than 1001	Remarks
Junior Assistant or Assistant or Record Clerk	Nil	1	2	Maximum 2
Office Assistant	1		2	Maximum 2
Watchman	1			Maximum 1

15. When the 2nd respondent school was granted sanctioned post of



W.A.(MD)No.341 of 2024

sweeper as part time and when the 1st respondent was appointed in the said part time sanctioned post and when the appointment order issued to the 1st respondent also states the appointment is only part time, then the 1st respondent is entitled to be treated as part time only and not fully time employee. The school being an aided school was permitted only to appoint the writ petitioner as part time employee. If the school is aggrieved, then the school ought to have obtained clarification at the time of appointment itself, but the school has failed to do so. Therefore, this Court is of the considered opinion that the Writ Court had erred in coming to conclusion that once it is sanctioned post, then the same ought to be full time only. At the cost of repetition as per G.O.Ms.No.583 it can be confirmed that the said post is only part time and not full time.

16. At this juncture, the learned Counsel appearing for the respondents relied on the judgment rendered in W.A.(MD)No.93 of 2018, dated 27.03.2018, in the case of **Director of Elementary Education and Others vs. Rani**, wherein the Coordinate Bench has distinguished **Singamuthu's case** and had held that part time employees in an unsanctioned post alone cannot claim regularization. This Court is of the considered opinion that the said judgment is not helping the respondents, since this Court had held there is no sanctioned post for full time sweeper but there is sanctioned post for part time only as per G.O.Ms.No.583. Then as per Rani's case the "part time sanctioned post" is not



W.A.(MD)No.341 of 2024

entitled to seek regularisation and the Rani's case is not helping the respondents.

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17. The contention of the writ petitioner is that even though the writ petitioner was appointed as part time employee, the writ petitioner was extracted work for the whole day, hence she is entitled to regularisation. This is a mistake committed by the school. If the school is extracting work for whole day, then the writ petitioner ought to have preferred complaint to the educational authorities, but no such complaint was preferred. Further it is seen prior to 1966 there was a post namely "Gardener-cum-Sweeper", from this it can be safely concluded that the said post may be full time job but "Sweeper" alone cannot be stated as full-time job.

18. The contention that G.O.Ms.No.74, Personnel and Administrative Reforms (F) Department, dated 27.06.2013 is not implemented to the persons working in the schools. Such contention is totally absurd. Since the G.O., is passed by Personnel and Administrative Reforms Department, the same is applicable to all departments including schools and aided schools. Infact the G.O.Ms.No.22 was passed based on the announced by Hon'ble Chief Minister during the Tamil Nadu Government Officials Union and Government Servants and also **Teachers Associations**. Therefore, the claim of the respondents it is not



W.A.(MD)No.341 of 2024

applicable to schools is absurd, misleading. It is unknown from where such misleading statements are being generated. Therefore, this Court is of the considered opinion that G.O.Ms.No.74, Personnel and Administrative Reforms (F) Department, dated 27.06.2013, is applicable to schools including private aided schools both minority and non-minority schools.

19. From the above discussion it is evident that Sweeper and Scavenger were sanctioned posts prior to 1966. Subsequently, the government took a policy decision to convert the same as part time post, hence issued G.O.Ms.No.583 and directed the schools to appoint “Sweeper and Scavenger” as a part time employee. Again, the government took a policy decision to outsource the work of Scavenger and Sweeper and thereafter the government had banned any appointment to the said posts by issuing G.O.Ms.No.238. But the schools taking advantage of the sanctioned posts prior to 1966, is creating confusion which has led to series of litigations. In *Singamuthu's case*, it has been clarified that there cannot be any regularization for part time employees and it has not distinguished sanctioned post or unsanctioned post. For argument sake, even if the Singamuthu's case had distinguished, the same is not helping the respondents, since this Court had already held the sanctioned post is only part time post as per G.O.Ms.No.583.



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20. Further in Singamuthu's case the Hon'ble Supreme Court had laid down the principles of regularisation and absorption of employees and the same is extracted hereunder:

"12. We may at the outset refer to the following well settled principles relating to regularization and parity in pay, relevant in the context of these appeals:

(i) High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming regularization had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and courts should not issue a direction for regularization of services of an employee which would be violative of constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularized, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularized.

(ii) Mere continuation of service by a temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be 'litigious employment'. Even temporary, ad hoc or daily- wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularization, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularization in the absence of a legal



right.

(iii) *Even where a scheme is formulated for regularization with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut off dates.*

(iv) *Part-time employees are not entitled to seek regularization as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularization or permanent continuance of part time temporary employees.*

(v) *Part time temporary employees in government run institutions cannot claim parity in salary with regular employees of the government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute.*

See: Secretary, State of Karnataka v. Uma Devi 2006 (4) SCC 1, M. Raja v. CEERI Educational Society, Pilani 2006 (12) SCC 636, S.C. Chandra v. State of Jharkhand 2007 (8) SCC 279, Kurukshetra Central Co-operative Bank Ltd v. Mehar Chand 2007 (15) SCC 680, and Official Liquidator v. Dayanand 2008 10 SCC 1. (emphasis added)

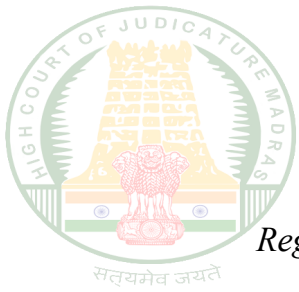
16. The learned Single Judge of the High Court, while allowing the writ filed by the respondent extended the benefit of the said G.O. Ms. No.22 dated 28.02.2006 and directed the appellants to grant regularisation of respondents service from the date of completion of ten years of service with salary and other benefits. The learned Judge failed to take note of



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the fact that as per G.O.Ms.No.22 dated 28.02.2006, the services of employees working in various government departments on full-time daily wage basis, who have completed more than ten years of continuous service as on 01.01.2006 will be regularised and not part-time Masalchis like the respondent herein. In G.O.Ms.No.84 dated 18.06.2012, the Government made it clear that G.O.Ms. No. 22 dated 28.02.2006 is applicable only to full- time daily wagers and not to part-time daily wagers. Respondent was temporarily appointed part-time worker as per Tamil Nadu Finance Code Volume (2) Appendix (5) and his appointment was completely temporary. The respondent being appointed as part-time Masalchi, cannot compare himself to full-time daily wagers and seek benefit of G.O.Ms.No.22 dated 28.02.2006. The Single Judge also failed to consider that the Government did not grant regularisation of services of any part-time employee on completion of ten years of his service as envisaged under the G.O.Ms. No.22 dated 28.02.2006.

17. The learned Single Judge erred in extending the benefit of G.O.Ms.No.22 dated 28.02.2006 to the respondent that too retrospectively from the date of completion of ten years of service of the respondent. The respondent was appointed on 01.04.1989 and completed ten years of service on 31.03.1999. As rightly contended by the learned senior counsel for the appellants, if the respondent is to be given monetary benefits from the date of completion of ten years of service, that is from 01.04.1999 till the date of his regularization that is 18.06.2012, the financial commitment to the State would be around Rs. 10,85,113/- (approximately)towards back wages apart from pension which will have a huge impact on the State exchequer. That apart, the learned senior counsel for the appellant submitted that in respect of



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Registration Department, about 172 persons were regularized under various G.Os. and if the impugned order is sustained, the Government will have to pay the back wages to all those persons from the date of completion of ten years in service and this will have a huge impact on the State exchequer. Since the impugned order directing regularization of the respondent from the date of completion of their ten years would adversely affect the State exchequer in a huge manner, the impugned order cannot be sustained on this score also.

18. It is pertinent to note that even the regularisation of services of part-time employees vide G.O.(Rt.) No.505 Finance (AA-2) Department dated 14.10.2009 and G.O.(2D) No.32 Finance (T.A.2) Department dated 26.03.2010 was effected by extending the benefit of G.O. dated 28.02.2006 only from the date of Government Orders and not from the date of completion of their ten years of service. The Division Bench also failed to take note that G.O.Ms.No.22 P &AR Dept. dated 28.02.2006 is applicable only to full-time daily wage employees and who had completed ten years of continuous service as on 01.01.2006 and not to part-time employees. As per G.O.(Rt.) No.84 dated 18.06.2012, the respondent is entitled to the monetary benefits only from the date of issuance of Government Order regularizing his service that is 18.06.2012. The impugned order of the Division Bench affirming the order of the Single Judge granting benefits to the respondent from the date of completion of ten years of service is erroneous and the same is liable to be set aside.”

21. In the Singamuthu's case the Hon'ble Supreme Court had answered to all the pleas that are being raised by the respondents. Especially held



W.A.(MD)No.341 of 2024

that regularisation from the date of completed of 10 years is erroneous. If there is no scheme for regularisation and cut-off date is not prescribed, then the regularisation is only from the date of issuance of government order. In the present case there is no such scheme. Therefore, the Writ Court granting regularisation without any scheme from the date of completion of 10 years is erroneous.

22. It is seen the writ petitioner would attain superannuation in 2024. At this stage the writ petitioner cannot go for any other employment and she was under false impression that her service would be regularised on some day. It is the false hope prevailing in the society based on various orders that they would be regularised someday. The employee need not suffer and at the same time the government also need not be burdened with huge financial burden. Therefore, this Court is directing the government to regularise the service of the writ petitioner from 01.03 2003 and such regularisation is only for granting pensionary benefits alone. It is made clear that the writ petitioner is not entitled to any salary for the said period. And also, the writ petitioner is not entitled to calculate 50% of the past service period, the reason is obvious the service is not full-time employment. Further the school is strictly directed not to appoint any person in the said post of Scavenger after the retirement of the writ petitioner, since as per G.O.Ms.No.238,



W.A.(MD)No.341 of 2024

the post of Scavenger is not available in the “cadre strength” to the school.

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23. With the above said directions, the writ appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

[J.N.B., J.] [S.S.Y., J.]

27.03.2025

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Index : Yes / No

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To

- 1.The Secretary,
Department of School Education,
Fort St. George, Chennai – 600 009.
- 2.The Director of School Education,
College Road, Chennai – 600 006.
- 3.The Chief Educational Officer,
Kanyakumari District,
Nagercoil-629 001.
- 4.The District Educational Officer,
Thuckalay,
Kanyakumari District.



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W.A.(MD)No.341 of 2024

J.NISHA BANU, J.

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Tmg

W.A(MD)No.341 of 2024

27.03.2025

(1/2)