



W.A.No.2088 of 2021 batch case

THE HIGH COURT OF JUDICATURE AT MADRAS

DATE ON WHICH RESERVED : 01.11.2021

DATE ON WHICH PRONOUNCED : 20.12.2021

CORAM:

**THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

W.A.Nos.2088 and 2034 of 2021, W.P.Nos.21901 and 22226 of
2019, 13308 & 13324 of 2020
and
CMP.Nos.13215 & 12985 of 2021 and WMP.Nos.21115 & 21509
of 2019 and 16447, 16449 & 16462 16463 of 2020

W.A.No.2088 of 2021

1.The Secretary to Government
Home Department
Fort St.George
Chennai 600 009

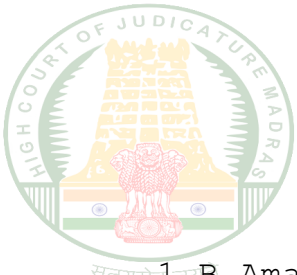
2.The Director General of Police
Chennai 600 004

3.The Inspector General of Police
Central Zone
Trichy 620 001

4.The Superintendent of Police
District Police Office
Thiruvarur

5.The Superintendent of Police
District Police Office
Trichy Rural District

... Appellants/Respondents



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Vs.

1.B.Amaravathi (Widow)
D/o.Balakrishnan

2.M.Ealkkiya
D/o.Mathiyalagan

3.C.Anitha Roselin
D/o.Christhunathan

4.V.Raman
S/o.Vembaiyan

5.G.Vasugai
D/o.Christhunathan

6.R.Manikandan
S/o.S.Rasaiyan

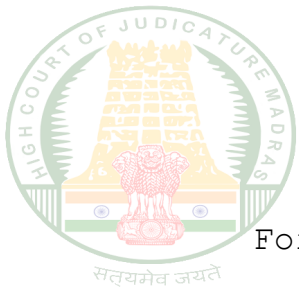
7.T.Ramachandran
S/o.V.Thangaiyan

8.A.Rajkumar
S/o.Algarsamy

9.P.Palaniayani
S/o.Pitachi

....Respondents/Petitioners

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order, dated 16.10.2019 made in W.P.No.29547 of 2019 and allow this writ appeal.



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For Appellants : Mr.R.Neelakandan
Additional Advocate General
Assisted by
Mr.K.Tippu Sultan
Government Advocate
in both the Writ Appeals

For Respondents : M/s.Bala & Daisy, G.
in W.A.No.2088 of 2021

For Respondents : M/s.Ravi Anantha Padmanaban
L.P.Maurya
For M/s.OM Sairam
in W.A.No.2034 of 2021

(In all the writ petitions)

For Petitioners : Mr.K.Ravi Anantha Padmanaban
in all the Writ petitions

For Respondents : Mr.R.Neelakandan
Additional Advocate General
Assisted by
Mr.K.Tippu Sultan
Government Advocate

COMMON JUDGMENT

S. VAIDYANATHAN, J. ,
and
RVIJAYAKUMAR, J. ,

The respondents in the writ petitions are the appellants herein.

2.The Government of Tamil Nadu issued G.O.Ms.No.400 Home (Police XV) Department dated 07.06.2012 sanctioning

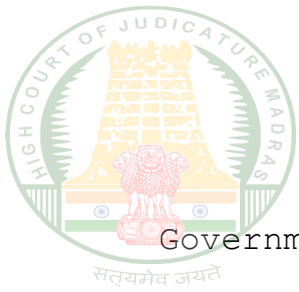


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558 additional posts of Sweepers in the Police Department.

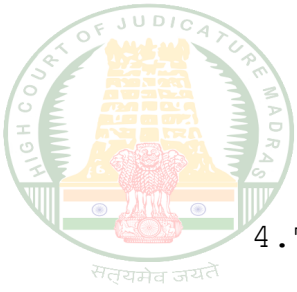
As per the said G.O., a special time scale of pay of Rs.1300-3000+ Grade Pay of Rs.300/- would be paid to the appointed Sweepers. Further, it was stated that the 558 additional posts are sanctioned by surrendering the existing 219 regular posts of Sweepers in the Police Department. Pursuant to the said Government Order, the writ petitioners were appointed in the special time scale of pay. The appointment order of the writ petitioners clearly indicated that their appointments are purely temporary until the same is regularised by the Government. The writ petitioners were issued the order of regularization on various dates and granted regularization from the date of their original appointments. The probation period was also declared by the District Level Authorities on various dates.

3.In the Education Department, the Scavengers were appointed under a special time scale of Rs.1300-3000+ Grade Pay of Rs.300/- based on G.O.(Ms).No.47, School Education (R.1) Department, dated 02.03.2012. The Scavengers challenged the offending portion of the



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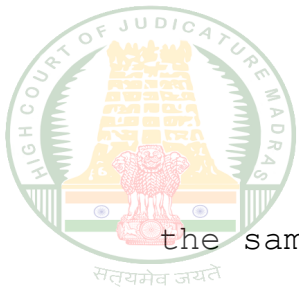
Government Order that fixed a special time scale of pay for them instead of regular time scale of pay ie. Rs.4800-10,000/- + Grade Pay of Rs.1300/-. This writ petition was numbered as W.P.(MD)No.17663 of 2014 and the Madurai Bench of Madras High Court allowed the writ petition by striking down the offending clause in the said G.O as un-sustainable. The learned Single Judge directed to place the Scavengers on par with other Scavengers already working in the Education Department by paying regular time scale of pay of Rs.4800-10000/-+ Grade Pay of Rs.1300/-. This order of the learned Single Judge was challenged in W.A.(MD).No.1584 of 2018. The Hon'ble Division Bench relied upon the Judgment of the Hon'ble Supreme Court reported in **2017 (1) SCC 148 (in the case of State of Punjab and others Vs.Jagjit Singh and others)** and **2018 (14) Scale 765 (in the case of Sabha Shanker Dube Vs.Divisional Forest Officer and others)** and dismissed the writ appeal on the ground that the payment of different time scale of pay for similar work, violates the principle of 'Equal Pay for Equal work'. This order of the Division Bench was implemented by the Education Department by issuing G.O(Ms).No.50, dated 08.03.2019.



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4.Taking Precedent from the order of the Division Bench and implementation of the same by the Education Department, the writ petitioners who are working as Sweepers in the Police Department sent representations to the appellants herein requesting them to be treated on par with Scavengers in the Education Department. The writ petitioners further requested that their time scale of pay may be fixed on par with Scavengers in the Education Department. Since the said request was not responded, the writ petitioners filed the present batch of writ petitions.

5.The writ petitioners contended that G.O.Ms.No.400 Home (Police XV) Department, dated 07.06.2012 is in violation of Article 14 and 39 of the Constitution of India. They further contended that they fall within the category of Clause-D employees and there cannot be any discrimination between the Scavengers in one department and the Scavengers in other departments. They further contended that the Sweepers and Scavengers fall within Clause-IV of Tamil Nadu Basic Service Rules and hence, there cannot be any differential time scale of pay between

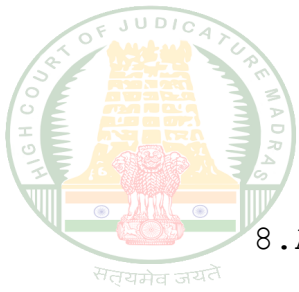


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the same Clause of employees. The writ petitioners further contended that the Scavengers working in the Education Department are similarly placed persons. The duties and responsibilities are similar in nature except that they are working in a different department.

6.The learned Single Judge after hearing both the parties, allowed the writ petitions by citing the Division Bench Judgment made in W.A.No.1584 of 2018 dated 29.01.2019. Challenging the said order of the learned Single Judge, passed on various dates, the batch of writ appeals have been filed by the department.

7.The learned Additional Advocate General appearing for the appellants contended that the writ petitioners were originally appointed in the special time scale of pay by creating additional post of Sweepers. He further contended that these additional posts were created only after surrendering 219 regular posts of Sweepers in the Police Department. Hence, the petitioners were never appointed in the regular post of Sweepers in the Police Department.



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8. According to the learned Additional Advocate General, the writ petitioners were appointed in a newly created post of Sweepers and hence, fixing special time scale of pay for newly created post cannot be said to be discriminatory. He further contended that the order passed with regard to the Education Department cannot be cited as a precedent and sought to be implemented for the benefits of the Sweepers appointed in the Police Department. He further contended that all the regular post of Sweepers in the Police Department which were vacant, have already been abolished. Only if the writ petitioners are appointed in the regular post of Sweepers, they will be entitled to claim time scale of pay at the rate of Rs.4800-10000/- + Grade Pay of Rs.1300/- .

9. The learned Additional Advocate General appearing for the appellants further contended that the mode of recruitment of the writ petitioners is completely different in the sense that the petitioners were appointed by the respective Battalions by calling for sponsorship from the employment exchange of the respective districts. Had it been an appointment to any regular post, it would

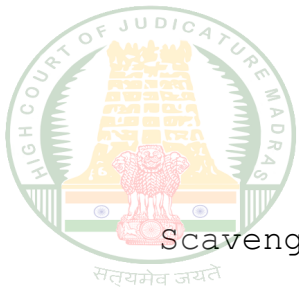


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have been done through the State level selection through a notification calling for applications at the State level.

He further contended that the writ petitioners were appointed under a Special G.O, and fixed a special time scale of pay. He further contended that the writ petitioners cannot be treated on par with other Sweepers who were working in the regular post and who were selected through a different recruitment process. He further contended that even though the nature of work and the responsibilities of the writ petitioners are definitely on par with other regular employees, the mode of recruitment and the selection process permits the State to treat the writ petitioners as separate Clause of persons.

10.The learned counsel for the respondents contended that all the employees are falling under Clause IV of Tamil Nadu Basic Service Rules irrespective of the fact whether they are appointed to the regular post or in a specially created post. He further contended that the petitioners are clearly on par with the other Scavengers working in the Education Department. This Court has struck down the special time scale of pay fixed for the



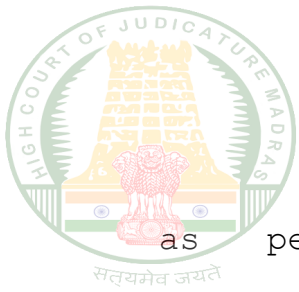
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Scavengers in the Education Department and the said order of the learned Single Judge has been confirmed by the Division Bench. He further contended that the order of the Division Bench has also been implemented by the Education Department by issuing Government Order by refixing the time scale of pay on par with regular employees.

11.The learned counsel for the respondents further contended that the Commander of the 10th Battalion had issued an order on 10.04.2014, refixing the time scale of pay with regard to six Sweepers and two Laundry Men under which, they were given enhanced time scale of pay of Rs.4800-10000/- + Grade pay of Rs.1300/-. When the same department had issued orders based upon the orders of the Court dated 14.07.2013 made in W.P.No.20499 of 2013, the writ petitioners who are working in other Battalions cannot be deprived of the same benefits.

12.The learned counsel for the respondents further contended that the State Government has not stopped recruiting Clause-IV employees under regular time scale of pay. According to the learned counsel for the petitioners,

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as per proceedings dated 20.01.2020, the Jail Superintendent, Central Prison, Kovai has called for applications for appointment as Sweepers indicating the time scale of pay of Rs.15700-50000/-. Hence, he contended that the contentions of the learned Additional Advocate General that the State Government has taken a policy decision under G.O.(Ms).No.49, Personnel and Administrative Reforms (F) Department dated 14.05.2002 that hereafter all the group-D employees will be appointed only through outsourcing and entrustment will be made on contract basis is not correct. Since the Government has not implemented the said G.O and continues to resort to regular appointment under Tamil Nadu Basic Service Rules, the Government cannot now contend that all the regular appointment to the posts of Sweepers and Scavengers have been stopped and they have been out sourced.

13.The learned Additional Advocate General was pleased to refer three judgments of the Hon'ble Supreme Court namely **(2010) 13 SCC Page 448 (in the case of Union of India and others Vs.A.S.Pillai and others), (2011) 2 SCC Page 429 (in the case of State of Rajasthan**



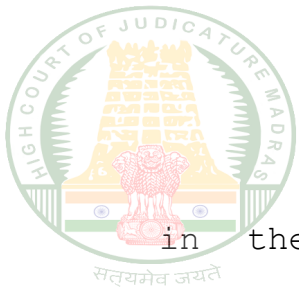
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and others Vs.Dayalal and others) and another judgment of the Hon'ble Supreme Court made **in Civil Appeal No.3770 of 2017, dated 07.03.2017 (in the case of Secretary to Government Commercial Tax and Registration Department and another Vs.A.Singamuthu) .**

14.We have carefully considered these three judgments. These three judgments relate to the issue of regularization or absorption of the service of the employees who were appointed as casual labours, temporary employees or part time workers. In the present case, all the writ petitioners are appointed in the sanctioned post as full time employees and their services have already been regularised. The State has also chosen to declare the probation of the writ petitioners. The writ petitioners have approached this Court only to revise their time scale of pay on par with the regular employees. Hence, the above judgements are not applicable to the facts of this case.

15.The issue that now arises for consideration is that whether the writ petitioners should be treated on par with Sweepers/Scavengers working in the regular vacancies

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in the same department and also on par with the scavengers working in the Education Department with regard to parity of pay scale. The Hon'ble Supreme Court in a judgment reported in **AIR 2019 Page 2521 (in the case of State of Bihar Vs.Bihar Secondary Teachers Struggle Committee, Munger)** in para 68 has held as follows;

"68.Analysis of the decisions referred to the above shows that this Court has accepted following limitations or qualifications to the applicability of the doctrine of 'equal pay for equal work'.

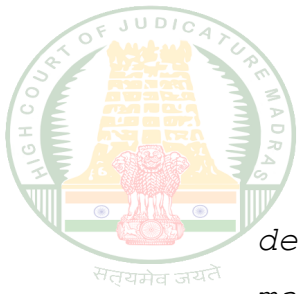
(i)The doctrine of 'equal pay for equal work' is not an abstract doctrine.

(ii)The principle of 'equal pay for equal work' has no mechanical application in every case.

(iii)The very fact that the person has not gone through the process of recruitment may itself, in certain cases, makes a difference.

(iv)The application of the principle of 'equal pay for equal work' requires consideration of various dimension of a given job.

(v)Thus normally the applicability of this principle must be left to be evaluated and the



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determined by an expert body. These are not matters where a writ Court can lightly interfere.

(vi) Granting pay scales is a purely executive function and hence the Court should not interfere with the same. It may have a cascading effect creating all kinds of problems for the Government and authorities.

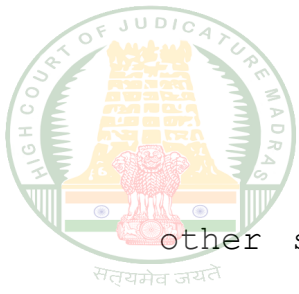
(vii) Equation of posts and salary is a complex matter which should be left to an expert body.

(viii) Granting of pay parity by the court may result in a cascading effect and reaction which can have adverse consequences.

(ix) Before entertaining and accepting the claim based on the principle of equal pay for equal work, the Court must consider the factors like the source and mode of recruitment/appointment.

(x) In a given case, mode of selection may be considered as one of the factors which may make a difference"

16. The Hon'ble Supreme Court in the said case has held that the mode of selection should be considered as one of the factors to decide whether the parity of pay can be granted to two sets of employees. In the said case, one set of teachers were selected under Special Rules and



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other set of teachers were selected through the service commission. Though the nature of work and the responsibilities of both the sets of teachers were one and the same and they were working in the same School, the Hon'ble Supreme Court was pleased to hold that since the mode of recruitment is completely different between the two sets of teachers, the doctrine of equal pay for equal work cannot be invoked. The said judgment of the Hon'ble Supreme Court was followed by the Full Bench of our High Court reported **in 2021 (2) CTC Page 801 (in the case of State and others Vs.S.Rajaram and others)**. The Hon'ble Full Bench while considering the issue of parity of pay scale between the vocational instructors appointed, prior to the introduction of G.O.(Ms).No.129 dated 18.05.1999 and those appointed subsequent to the G.O, held that both the set of teachers stand on a different footing though the nature of work performed by them are almost the same.

17.The Hon'ble Full Bench was also pleased to hold that a complete and wholesale identity is required and a mere overlapping of the functions and responsibilities are not enough. The Hon'ble Full Bench set aside the order of



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the learned Single Judge and dismissed the writ petition filed by the Vocational Instructors seeking parity of time scale of pay.

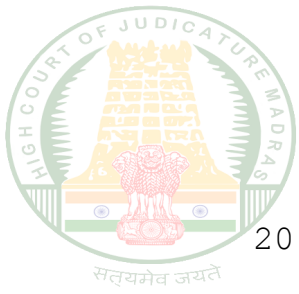
18.In the present case, the Police Department has chosen to surrender 219 regular posts of Sweepers which were vacant. Only in lieu of 219 regular posts, 558 additional posts of Sweepers have been sanctioned. Even as per G.O(Ms).No.400 dated 07.06.2012, under which the writ petitioners were appointed, this special time scale of pay has been mentioned. The writ petitioners were very well aware, even at the time of their appointments, that they are not appointed to the regular posts of Sweepers, but appointed only in a newly created additional posts of Sweepers under a special Government Order with special time scale of pay. They were recruited through the sponsorship of the employment exchange and appointed by the respective district level authorities and their appointments were purely temporary as per the appointment orders. Later, they were regularised in service with effect from the date of their initial appointments. The above said facts will indicate that the mode of



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recruitments and the selection process are completely different from that of the employees recruited and selected to the regular post of Sweepers. The recruitment and selection of the petitioners were made only based upon the G.O(Ms).No.400 dated 07.06.2012 which clearly indicates the special time scale of pay also. Now, taking advantage of the some benefits being conferred upon the Sweepers of the other departments, the writ petitioners have chosen to challenge the very Government order, under which they were appointed.

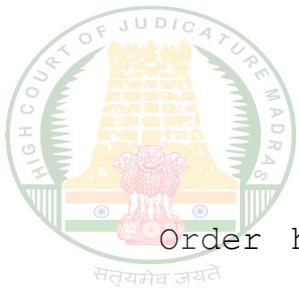
19. As on today, there are no vacant regular post of Sweepers in the Police Department. The posts in which the writ petitioners were appointed are special posts created under G.O(Ms).No.400, dated 07.06.2012. Hence, the question of seeking 'equal pay for equal work' cannot be invoked, when the mode of recruitment and selection process are completely different. On the date of their appointments, all the regular posts have already been surrendered.



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20.The writ petitioners further contended that the Scavengers working in all the departments should be treated equally and equal pay should be granted to all these Scavengers cannot be countenanced in the light of the judgement of the Hon'ble Supreme Court in **AIR 2019 SC Page 2521**, especially on the ground that the mode of recruitment and the selection process of the subject post and the reference post are completely different.

21.The learned counsel for the petitioners referred a Division Bench judgment of this Court in W.A.Nos.2497 and 497 of 2018 in which one of us (Mr.Justice.S.Vaidyanathan) is a party. In the said case, the Government had passed G.O.Ms.No.338 dated 26.08.2010 extending the parity of pay to all the technical category posts in all the Government Departments and local bodies. The writ petitioners in those cases approached the High Court contending that the said G.O has not been implemented in respect of soap chemists employee in Khadi Board. Hence, the issue before the Bench was whether the soap chemists in Khadi Board were entitled to the benefit under G.O.Ms.No.338 dated 26.08.2010. But, in the present case, no such Government

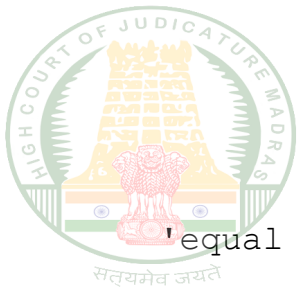


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Order has been passed granting pay parity. On the other hand, the Government is opposing the pay parity on the ground that the mode of selection is different. Hence, the ratio in the said Judgment is not applicable to the facts of the present case.

22.The learned Single Judge has allowed the writ petition and quashed the offending portion of the G.O., only based upon the order passed by the Division Bench in W.A.No.1584 of 2018 dated 29.01.2019 with regard to the Education Department. The Judgment of the **Hon'ble Supreme Court in AIR 2019 SC Page 2521** is dated 10.05.2019 and the same has been followed by the Full Bench of our High Court reported **in 2021 (2) CTC Page 801** dated 05.03.2021.

23.In view of the later Supreme Court judgement and the Full Bench Judgment of our High Court, allowing of the writ petition based upon the Division Bench order dated 29.01.2019 is not sustainable in the eye of law. The **Hon'ble Supreme Court in AIR 2019 SC page 2521** has held that the different mode of recruitment and selection process will limit the scope of invoking the principle of

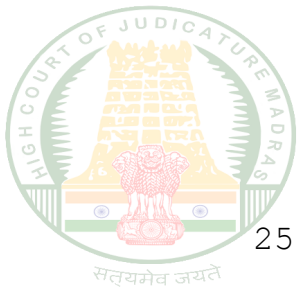


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'equal pay for equal work'. In the instant case, the recruitment process between the subject post and reference post are completely different. Hence, the writ petitioners will not be entitled to claim pay parity on par with employees appointed to the regulars posts.

24. It is to be noted that while relying on a judgment, if it is found that the factual situation totally differs, then there is no compulsion for the subordinate courts to blindly rely on the same to arrive at the same conclusion, as held by the Hon'ble Supreme Court in the case of **Padmasundara Rao (Dead) & others vs. State of Tamil Nadu and others**, reported in **(2002) 3 SCC 533**, as follows:

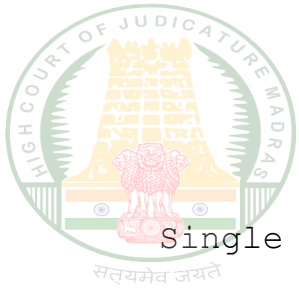
"Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington vs. British Railways Board* (1972) 2 WLR 537. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."



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25. In the light of the aforesaid judgment, we want to point out that the decision rendered by the Supreme Court reported in **AIR 2019 SC page 2521** (supra) may not be applicable to all cases and may be applied, depending upon the facts and circumstances of each case. For example, a person would have had the benefit of the award of the Labour Court / Tribunal, Authority under Shops Act and the like and he cannot be simply deprived equal pay for equal work, citing the said judgment. Further, yet situation may arise, wherein the provisions of Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 may be applicable and the persons would not have been directly recruited following due procedures, but would have been absorbed pursuant to completion of 480 days of continuous service in a period of 24 calendar months against sanctioned posts. In that context, they are deemed to have attained permanent status and at that stage, the adoption of a different yardstick on the basis of the judgment of the Supreme Court with regard to the extension of pay scale may not be correct.

26. With the above observations and discussions, these **writ appeals are allowed** and the orders of the learned



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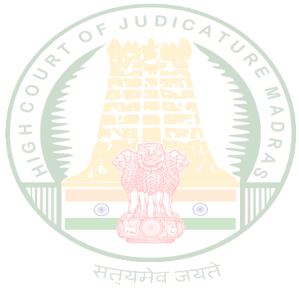
Single Judge are set aside and the **writ petitions stand**

dismissed. Since some of the writ petitions with similar prayer have been tagged with the writ appeals, those writ petitions are also dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

(S.V.N.J.,) (R.V.J.,)
20.12.2021

Index :yes
Internet :yes
msa

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.



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W.A.No.2088 of 2021 batch case

S. VAIDYANATHAN, J.

AND

R. VIJAYAKUMAR, J.

msa

To :

1.The Secretary to Government
Home Department
Fort St.George
Chennai 600 009

2.The Director General of Police
Chennai 600 004

3.The Inspector General of Police
Central Zone
Trichy 620 001

4.The Superintendent of Police
District Police Office
Thiruvarur

5.The Superintendent of Police
District Police Office
Trichy Rural District

Pre-delivery Judgment made in
W.A.Nos.2088 and 2043 of 2021,
W.P.Nos.21901 and 22226 of 2019,
13308 and 13324 of 2020

20.12.2021

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