

W.P.No.11065 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 14.09.2022
PRONOUNCED ON : 19.09.2022

CORAM :

THE HON'BLE MR.M.DURAI SWAMY,
ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE SUNDER MOHAN

W.P.No.11065 of 2018
and W.M.P.12971 of 2018

Nethrodaya
Represented by its
Founder – Trustee
Mr.C.Govindakrishnan,
No.47/1, Phase – II, Nolambur,
Mogappair West,
Chennai – 600 037.

... Petitioner

vs.

1.The State of Tamil Nadu rep.by
The Secretary to Government
Welfare of Differently Abled Persons Department,
Namakkal Kavingar Maligai, Secretariat,
Chennai – 600 009.

2.The State Commissioner for the persons with disability
Office of the State Commissionerate for the



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Differently Disabled, Lady Wellington Campus,
Chennai – 600 005.

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3.The Principal Secretary to the Government,
Department of Social Welfare,
Secretariat, Chennai – 600 009.

4.The Principal Secretary to Government,
Revenue Department,
Secretariat, Chennai – 600 009.

5.The Commissioner,
Department of Revenue,
Ezhilagam, Chennai – 600 005.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus directing the third Respondent to hand over the administration of differently abled pensions scheme to Respondents 1 & 2 and consequently directing the Respondents to immediately enhance the maintenance allowance from Rs.1000/- to Rs.1500/- per month to the visually challenged beneficiaries immediately on par with other differently abled beneficiaries.

For Petitioner : Mr.A.M.Venkatakrishnan

For R1 to R5 : Mr.S.Silambannan
Additional Advocate General
Assisted by Mrs.R.Anitha
Special Government Pleader



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ORDER

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SUNDER MOHAN,J.

This Petitioner seeks a Writ of Mandamus directing the third Respondent to handover the administration of Differently Abled Pensions Scheme to the first and second Respondents and consequently, directing the Respondents to enhance the maintenance allowance from Rs.1000/- (Rupees One Thousand only) to Rs.1500/- (Rupees One Thousand Five Hundred only) per month to the visually challenged beneficiaries on par with other disabled beneficiaries.

2.The Petitioner is an organization working for the welfare of Differently Abled Community, which has taken initiatives to provide quality special education, healthcare and employment opportunities to the visually impaired communities in the State of Tamil Nadu. Their case is that the second Respondent provides maintenance allowance of Rs.1500/- (Rupees One Thousand Five Hundred only) to several Differently Abled Persons with severely affected locomotor, mentally retarded and suffering from leprosy and muscular dystrophy. Their grievance is that the Visually Impaired Persons, who are also severely disabled, are not treated on par

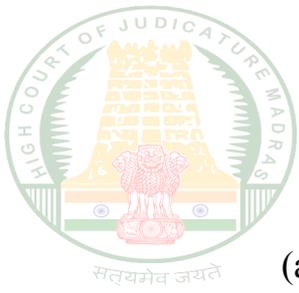


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with the other severely disabled persons and only a sum of Rs.1000/-

(Rupees One Thousand only) is paid as monthly pension to the Visually Impaired Persons. Further, the Differently Abled Persons, who suffer from visual impairment, are put to extreme hardship because the Scheme is administered by the Social Welfare Department. They are asked to obtain Certificates of Approval from Village Administrative Officers, Revenue Inspectors and Tahsildar to avail the benefits under this Scheme. Whereas, the other Differently Abled Persons, whose maintenance allowance is handled by the Differently Abled Department, are not put to such hardship. Therefore, the Petitioner seeks a direction to the State to transfer the Monthly Pension Scheme to the Differently Abled Department and also to treat them on par with other Differently Abled Persons.

3.The Respondents have filed individual Counter Affidavits at various stages of the proceedings. They have also filed Additional Counter Affidavit pursuant to certain interim directions passed by this Court calling for reports as to the steps taken by the Respondents to alleviate the grievance of the Differently Abled Persons, who are visually impaired. Broadly the stand of the Respondents is that:-



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(a) the Differently Abled Persons, who are visually impaired, are granted a monthly pension of Rs.1000/- (Rupees One Thousand only). The Scheme has been promoted by the State Government since the State Government found the Scheme of the Union Government called the **“Indira Gandhi National Disability Pension Scheme”** which provided Rs.300/- (Rupees Three Hundred only) as monthly pension was inadequate. The State Government, therefore, sanctioned a sum of Rs.700/- (Rupees Seven Hundred only) in addition to the amount sanctioned by the Central Government and increased the pension amount to Rs.1000/- (Rupees One Thousand only). The number of persons that are covered under the Central Government Schemes was restricted to 64,045, however, the State Government covered nearly 3,55,897 beneficiaries.

(b) the Differently Abled Persons, who are now given a monthly maintenance allowance of Rs.2000/- (Rupees Two Thousand Only) are:

- (i) persons with intellectual disability
- (ii) severely affected locomotor disabled
- (iii) persons affected with muscular dystrophy and
- (iv) leprosy cure problems.

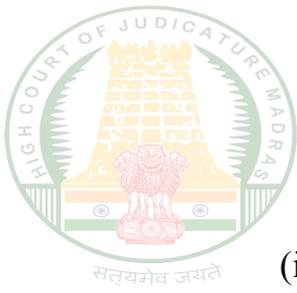


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These categories of persons are ineligible and incapable of public employment or any other type of employment, whereas, the Differently Abled Persons, who are visually impaired are eligible for public and private employment.

(c) the State has, besides, giving a monthly pension of Rs.1000/- (Rupees One Thousand only) to the Differently Abled Persons, who are visually impaired, are also providing other assistance in the form of establishing Early Intervention Centres, providing Readers Allowance to visually impaired students, providing Electronic Braille Devices, Smart Phones with tailor made Apps, Marriage Assistance, Free Travel Concession in State owned Buses if the distance is less than 100 Kilometres and 75 per cent Travel Concession in Buses within the State of Tamil Nadu, Training in book binding and Unemployment Allowance to Differently Abled Persons, who are enrolled with the Directorate of Employment and Training and Scribe Assistance also. That apart, the Government also promoted various Schemes which are common to all the Differently Abled Persons such as:

(i) Anthodhaya Anna Yojana (AAY)



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(ii) Mahatma Gandhi National Rural Employment Generation

Scheme

(iii) Chief Minister's Comprehensive Health Insurance Scheme

(iv) Tamil Nadu Welfare Board for Differently Abled.

(d) the State has never discriminated between the different categories of Differently Abled Persons. The State has always taken steps to make effective provision for public assistance to the Differently Abled Persons including visually impaired persons.

(e) since the Pension Scheme and other such similar Schemes are basically Central Government Schemes wherein, the State Government has increased the quantum of amount to be distributed to the beneficiaries, the Social Welfare Department, through the Revenue Department, is administering those Schemes. The Government took into consideration the interest of the persons concerned and brought the Pension Scheme under the Social Welfare Department. The Petitioner's apprehension is that since it is under Social Welfare Department, the visually impaired persons are put to hardship is unfounded.



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4. Heard, Mr.A.M.Venkatakrishnan, learned counsel for the Petitioner and Mr.S.Silambannan, learned Additional Advocate General representing for Mrs.R.Anitha, learned Special Government Pleader, for the Respondents.

5. Mr.A.M.Venkatakrishnan, learned counsel for the Petitioner submitted that the Respondents have violated Article 14 of the Constitution of India while making discrimination between the Differently Abled Persons, who are visually impaired and other Differently Abled Persons. The visually impaired persons are equally incapacitated and suffered from disability. Most of the visually impaired persons are unskilled, illiterates and hence unemployed, who are incapable of earning a livelihood. Hence, they ought to be treated on par with the other Differently Abled Persons, who are paid a maintenance allowance of Rs.1500/- (Rupees One Thousand Five Hundred only) per month which has now been increased to Rs.2000/- (Rupees Two Thousand only) per month. The learned counsel would further submit that the cost of living for all the persons are one and the same and the discrimination in the quantum of allowance paid to the different categories of Disabled Persons is illogical and unfounded.



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6. Mr.S.Silambannan, learned Additional Advocate General submitted that the Government has taken all steps to alleviate the suffering of all kinds of Differently Abled Persons. The Differently Abled Persons, who are now paid a maintenance amount of Rs.2000/- (Rupees Two Thousand Rupees only) are persons, who are by virtue of their disability, are incapable and ineligible for public employment or any other kind of employment. They formed a separate class and they cannot be equated with the visually impaired Differently Abled Persons, who are eligible for public employment and other types of employment. The State has provided for several Schemes which attempts to enhance the living condition of all the Differently Abled Persons, including the visually impaired persons, which are enumerated in the Counter Affidavit filed by the third Respondent. These Schemes are aimed at providing skills, education to the visually impaired Differently Abled Persons so as to bring them on par with normal individuals and provide employment and good standard of living.

7. We have considered the submissions of the learned counsel on either side.



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8.The Petitioner has sought for two prayers in the above Writ Petition. The first prayer seeks for transfer of Pension Scheme from the Social Welfare Department to the Differently Abled Department. The Petitioner has alleged that since the Pension Scheme falls under the Social Welfare Department, which is administered through the Revenue Department, several hardships are caused to the Differently Abled Persons. This Court cannot direct the Respondents that the Scheme has to be administered only by a particular Department. The grievance of the Petitioner is that the Social Welfare Department is not acting fairly. This is now sought to be addressed by the Government by designating Revenue Divisional Officers in all Districts to look into the grievances of the Differently Abled Persons, who are visually impaired. When the matter was heard on 06.03.2019, the learned Additional Advocate General had given an undertaking that the Government will designate Revenue Divisional Officers in all Districts to look into the individual grievances. The said undertaking has been taken on record. The order dated 06.03.2019 passed by this Court is extracted hereunder:

“After hearing the learned Counsels at some length and on perusing the Counter Affidavit filed by Dr.Venkatachalam, Director, Social Security Schemes,



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*Ms.Narmada Sampath, learned Additional Government Advocate General fairly undertakes that in order to avoid any administrative inconvenience to any person belonging to Differently Abled Persons with Blindness Category, the State Government will designate **Revenue Divisional Officers** in all Districts to look into the individual grievances of a such persons on the Administrative Side, if any.*

2.The said Undertaking of the learned Additional Advocate General is taken on Record.”

9.In view of the same, the Respondents are directed to strictly adhere to the undertaking given by them before this Court and ensure that no hardship is caused to the Differently Abled Persons for getting the benefits under the Monthly Pension Scheme. It is made clear that the Differently Abled Persons shall not be put to sufferings merely because the Monthly Pension Scheme is administered by the Social Welfare Department. Therefore, the Respondents shall ensure that no hardship is caused to the Differently Abled Persons and unnecessary formalities are not insisted upon to claim the benefits under the Scheme.



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10. The second prayer in the Writ Petition is that the pension must be enhanced to Rs.1500/- (Rupees One Thousand Five Hundred only) on par with the maintenance allowance of Rs.1500/- (Rupee One Thousand Five Hundred only) given to the other Differently Abled Persons. In the Counter Affidavit filed by the third Respondent dated 07.06.2022, the third Respondent stated that the benefit of Rs.1000/- (Rupees One Thousand only) per month is extended under Pension Scheme, jointly by the Union of India and the State Government. The Union of India provides Rs.300/- (Rupees Three Hundred only) per month under the “**Indira Gandhi National Disability Pension Scheme**”. The State Government provides Rs.700/- (Rupees Seven Hundred only) per month in addition to a sum of Rs.1000/- (Rupees One Thousand only) per month to the Differently Abled Persons as pension. The total number of persons, who are eligible for benefit under the Scheme of the Union of India is 64,045 persons, whereas, the State Government has not only increased the benefit amount by adding Rs.700/- (Rupees Seven Hundred only), but also increased the number of persons to 3,55,897 to be covered under this Scheme by providing funds. The Counter further states that the maintenance allowance, which was originally Rs.1500/- (Rupees One Thousand Five Hundred only), is now



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enhanced to Rs.2000/- (Rupees Two Thousand only) for the persons, who are incapable of getting public employment or other employment. The first Respondent filed a counter dated 27.09.2018 stating that the following persons are the beneficiaries of the Maintenance Allowance Scheme:

<i>Sl.No.</i>	<i>Category of Disability</i>	<i>Criteria – Percentage of Disability</i>	<i>Income ceiling</i>	<i>No. of beneficiaries</i>
1	Persons with intellectual disability	40% and above	No	1,35,773
2	Severely affected persons	75% and above	No	20,440
3	Persons affected with muscular dystrophy	40% and above	No	2,853
4	Leprosy affected persons	40% and above	No	6,745
	Total			1,65,811

The Respondents have also stated that Maintenance Allowance Scheme was extended only to the above categories of persons because they are incapable of doing any job.

11. The learned counsel for the Petitioner submitted that their grievance is that all Differently Abled Persons under the visually impaired category cannot be treated as one category. The Differently Abled Persons, who are visually impaired in the Rural areas and / or women, aged persons,



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or on account of sickness or infirmity incapable of doing any job have to be treated on par with the other Differently Abled Persons, who are receiving maintenance allowance.

12. We are conscious of the fact that the Differently Abled Persons, who are visually impaired are put to hardship and suffering and there cannot be any doubt on that aspect. At the same time, we cannot ignore the basis on which the Respondents have extended the benefit of the maintenance allowance to specific categories of persons stated above. The basis is that by the very nature of their disability, they are either ineligible or incapable of either public employment or private employment. It is not in dispute that the Government has Schemes for enhancing the standard of living of the Differently Abled Persons, who are visually impaired. The Additional Counter of the first Respondent dated 10.03.2022 and the Counter Affidavit of third Respondent dated 07.06.2022 has listed out the various Schemes which are available for the benefit of the Differently Abled persons. One such Scheme provides for unemployment allowance to visually Disabled Persons, who are visually impaired and are enrolled with Directorate of Employment and unemployed for more than one year are paid allowance.



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Rs.600/- (Rupees Six Hundred only) per month is paid for a person who has completed 10th standard. Rs.750/- (Rupees Seven Hundred and Fifty only) per month is paid for a person who has completed 12th standard. Rs.1000/- (Rupees One Thousand only) is paid for Differently Abled person, who is a Graduate.

13. It is also not in dispute that the Differently Abled Persons, who are visually impaired, are entitled to public employment and private employment as well. Therefore, the Differently Abled Visually Impaired Persons cannot be equated with Differently Abled Persons who are ineligible to get any employment on account of the sickness and infirmity suffered by them. The basis adopted by the Respondents to treat them differently cannot be faulted.

14. However, in view of the submission of the learned counsel for the Petitioner that certain persons who are visually impaired are also ineligible for employment on account of other sickness, infirmity and old age, the Respondents may consider the request of those persons to treat them on par with other Differently Abled Persons who are getting the monthly maintenance allowance, on merits and in accordance with law.



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15. Therefore, we are of the view that we cannot direct the Respondents to treat all the Differently Abled Persons under Visually Impaired category on par with Differently Abled Persons who are incapable of any employment.

16. With the above observations, the Writ Petition is disposed of. No Costs. Consequently, the connected miscellaneous petition is closed.

[M.D.,A.C.J.]

[S.M., J.]

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Index : Yes/No

Speaking Order/Non Speaking Order

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To

- 1.The Secretary to Government
Welfare of Differently Abled Persons Department,
Namakkal Kavingar Maligai, Secretariat,
Chennai – 600 009.
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- 5.The Commissioner,
Department of Revenue,
Ezhilagam, Chennai – 600 005.



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M.DURAI SWAMY.,A.C.J.
and
SUNDER MOHAN, J.

dk

Pre-delivery order in

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and W.M.P.12971 of 2018

19.09.2022