



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 22.06.2017

DELIVERED ON : 13.07.2017

CORAM :

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

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W.P. (MD) Nos.12521 to 12527 of 2016

Udaiyar	...Petitioner in W.P. (MD) No.12521 of 2016
Vallinayagam	...Petitioner in W.P. (MD) No.12522 of 2016
Gurusamy Thevar	...Petitioner in W.P. (MD) No.12523 of 2016
Arulappan	...Petitioner in W.P. (MD) No.12524 of 2016
Thangapandian	...Petitioner in W.P. (MD) No.12525 of 2016
Visuvasam	...Petitioner in W.P. (MD) No.12526 of 2016
Muthaiah	...Petitioner in W.P. (MD) No.12527 of 2016

Vs.

1.The Accountant General (A&E),
Pension,
No.391, Anna Salai,
Chennai.

2.The District Collector,
Tirunelveli District,
Tirunelveli.

3.The Tahsildar,
Sankarankovil Taluk,
Sankarankovil Taluk,
Tirunelveli District. ... Respondents in all the Writ Petitions.

Prayer: Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, to direct the Respondents to sanction the Pensionary benefits to the Petitioners from the date of appointment calculating the Petitioners' representations dated 05.01.2016 made to the Respondents.



In all the Writ Petitions

For Petitioners : Mr.S.Visvalingam
for P.Krishnasamy

For R1 : Mr.P.Gunasekaran,

Standing Counsel for Accountant General Office.

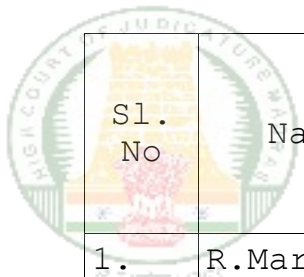
For R2 and R3 : Mr.M.Murugan,
Government Advocate

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COMMON ORDER

The above Writ Petitions have been filed to issue a Writ of Mandamus, to direct the Respondents to sanction the Pensionary benefits to the Petitioners from the date of appointment calculating the Petitioners' service from the date of their appointment.

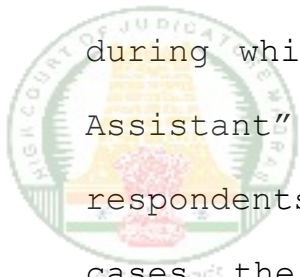
2. The petitioners in all these Writ Petitions were originally appointed as "Thalayari / Village Assistant" on different dates between the year 1973 and 1981. Though the petitioners in these Writ Petitions were appointed on permanent basis, they were not given any fixed regular time scale of pay, having regard to the nature of work. Though the petitioners in all these Writ Petitions were working continuously, their service were regularized only in the year 1995 with effect from 01.06.1995. The period between which the petitioners were appointed and served as Thalayari on consolidated pay and the date on which the petitioners were absorbed as Village Assistant and working in the regular time scale of pay are indicated in the table given below:-



Sl. No	Name of the petitioner	Period Served as Thalayari on consolidated pay	Period Served as Village Assistant in the regular time scale of pay
1.	R.Mariyappan (W.P. (MD) No.12262 of 2016)	12.02.1982 to 31.05.1995	01.06.1995 to 31.05.2004
2.	C.Udaiyar (W.P. (MD) No.12521 of 2016)	01.03.1975 to 31.05.1995	01.06.1995 to 28.02.2005
3.	K.Vallinayagam (W.P. (MD) No.12522 of 2016)	17.07.0973 to 31.05.1995	01.06.1995 to 31.05.2005
4.	S.Gurusamy Thevar (W.P. (MD) No.12523 of 2016)	24.02.1976 to 31.05.1995	01.06.1995 to 31.05.2005
5.	I.Arulappan (W.P. (MD) No.12524 of 2016)	22.02.1980 to 31.05.1995	01.06.1995 to 30.04.2005
6.	K.Thangapandian (W.P. (MD) No.12525 of 2016)	30.09.1978 to 31.05.1995	01.06.1995 to 31.05.2003
7.	A.Visuvasam (W.P. (MD) No.12526 of 2016)	11.12.1976 to 31.05.1995	01.06.1995 to 31.10.2000
8.	M.Muthaiah (W.P. (MD) No.12527 of 2016)	21.10.1981 to 31.05.1995	01.06.1995 to 30.06.20004

3. Though the petitioners in these Writ Petitions have completed more than 15 years of service as "Thalayari / Village Assistant", their service before regularization was not taken into account for calculation of pension, on the ground that the services put in by the petitioners in these Writ Petitions, after regularization as "Thalayari / Village Assistant" fall short of 10 years and therefore the petitioners were not given pensionary benefits. It was therefore several representations were made by the petitioners.

4. Though this Court has earlier passed several orders accepting the case, of similarly placed persons and granted relief by directing the respondents to calculate 50% of their service



during which the petitioners were serving as "Thalayari / Village Assistant" on consolidated pay, as qualified service and the respondents have also implemented the orders of Court in several cases, the benefits were not given to the petitioners in these Writ Petitions. Hence, they have filed the above Writ Petitions.

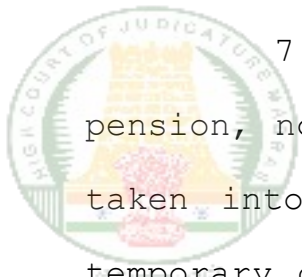
5. Mr.S.Visvalingam, learned counsel appearing for the petitioners relied upon the Rule 11(4) of Tamil Nadu Pension Rule, 1978, which reads as follows:

".....11.Commencement of qualifying service.--(1) Subject to the provisions of these rules, qualifying service of takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity. In the case of a Government servant retiring on or after the 1st October, 1969, temporary or officiating service in a pensionable post whether rendered in a regular capacity or not shall count in full as qualifying service even it is not followed by confirmation.".....

6.The learned counsel appearing for the petitioners has also relied upon few judgments of this Court in a batch of Writ Petitions in W.P.(MD)Nos.11094 to 11101 of 2008, dated 06.03.2009. The learned single Judge of this Court allowed the aforesaid batch of Writ Petitions, wherein this Court has held as follows:

".....6. In the case on hand, there is no factual dispute that the petitioners did not have such qualifying service, if the period of their services with effect from their regularization as Village Servants, namely from 28.02.1976 is also taken into account. If the said service from 28.02.1976 is computed, then there cannot be any dispute that the petitioners are liable for pension benefits under the Schemes. Thus, the impugned order is not correct and the same is liable to be set aside.

7.In the result, the Writ Petition is allowed, the impugned order of the respondent dated 5.03.2007 is set aside and the respondent is directed to process the pension papers of the petitioners and issue appropriate consequential orders, within a period of 12 weeks from the date of receipt of a copy of this order, if the petitioner satisfy the other requirements. No Costs."



7. From the above, it is evident that for payment of pension, not only the appointment in substantive capacity should be taken into account but also the appointment in a officiating or temporary capacity should be counted for calculating the qualifying service. Relying upon the said Rule, this Court has allowed several Writ Petitions filed by the "Thalayaris/Village Assistants", whose service after regularization fall short of 10 years but have rendered service either on temporary basis or permanent basis on consolidated pay for many years.

8. The Honourable Division Bench of this Court in the case of ***The District Collector and others vs K.Raman Nair*** in ***W.A. (MD) No.16 of 2009*** by judgment dated 16.02.2009, has accepted the case of similarly placed persons and dismissed the Writ Appeal preferred by the respondents, as against the orders passed by this Court allowing the Writ Petition filed by the retired "Thalayari/Village Assistant". It is relevant to mention that the Honourable Division Bench of this Court has also relied upon the Tamil Nadu Village Assistants' Pension Rules, 1995, particularly chapter-II, relating to the Pension and Gratuity. The relevant portion of the judgment of the Honourable Division Bench is extracted for convenience:

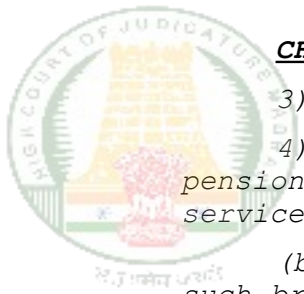
"....8. So far as the Village Assistants are concerned, they are guided by Special Rules known as Tamilnadu Village Assistants Pension Rules, 1996. Chapter-II of the said Rules deals with Pension and Gratuity and relevant portions of which are quoted hereunder:

"CHAPTER-I GENERAL

(1)(i) These rules shall be called the Tamil Nadu Village Assistants Pension Rules 1996.

(ii) They shall be deemed to have come into force on 1st June 1995.

(2) These rules shall apply to the full time Village Assistants employed in the Revenue Department.



CHAPTER -II. PENSION AND GRATUITY

3) The age of retirement shall be 60 years.

4) (a) In computing the length of service for calculation of pension and gratuity temporary, officiating and permanent (full time) service shall be reckoned as qualifying service.

(b) If there are breaks in service on account of any reason, such breaks shall not have the effect of forfeiting the past service, provided the Village Assistants had been discharged or retired as per rules and orders.

(c) Leave without pay, suspension allowed to stand as a specific penalty, overstaying of joining time or leave not subsequently regularized and periods of breaks shall not be reckoned as qualifying service.

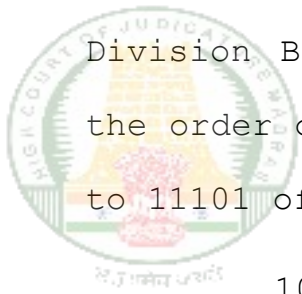
7(i) A Village Assistant shall be eligible for pension if he has rendered a total qualifying service of 10 years or more and discharged or retired as per rules and orders.

(i) Pension shall be calculated at 50% of average emoluments drawn in the last 10 months before retirement for qualifying service of 66 half years and proportionate pension shall be paid for a qualifying service of less than 66 half years subject to a minimum of Rs.990/-".

9. From the aforesaid Special Rules relating to Village Assistants, it would be evident that not only the permanent (full time) service to be counted for reckoning the period of qualifying service but, the period of service rendered as temporary (full time) or officiating (full time) shall also be counted for reckoning the period of qualifying service.

10. The writ petitioner (respondent herein) having completed more than 10 years of service on temporary basis, since 21st July 1975, the entire period of service has to be counted for the purpose of granting pension, both as per the Special Rules and the General Rules, more particularly Rule 11 of the Tamil Nadu Pension Rules, 1978."

9. Similar view was taken by the Honourable Division Bench of this Court in **W.A. (MD) No.363 of 2010**, in the case of **The Tahsildar vs. Esakki and others** by judgment dated 20.08.2010. In the said judgment the Honourable Division Bench of this Court relied upon the payment of pension and gratuity as per the provisions of Tamil Nadu Village Assistants' Pension Rules, 1995, was considered. Once again in the case of the **Accountant General and other vs. Ponnurangasamy**



Division Bench of this Court by order dated 14.02.2011, confirmed the order of learned single Judge of this Court in W.P.(MD)Nos.11094 to 11101 of 2008 by order dated 06.03.2009.

10. The learned counsel for the petitioners also relied upon the views of other judgments of this Court following the earlier view consistently taken by this Court as referred to supra.

11. The learned counsel for the petitioner further relied upon the Government Order in G.O.Ms.No.173, Revenue Department, dated 29.05.2014, whereby the order passed by this Court in individual cases was complied with. The relevant portion of the said Government Order is as under:

".....10.The Government after careful examination of the above case and decided to compliance the order passed by the Hon'ble Madurai Bench of Madras High Court dated 06.03.2009 in W.P.(MD) Nos.11094 to 11101/2008 filed by Tvl.K.Ponnurangasamy and 7 others Village Assistants (Retired), and accordingly directed that the petitioners Tvl's.K.Ponnusamy, K.Muthiah, V.Chinna Mariappan, R.Muthiah, S.Rasu Thevar, S.Chakkan, G.Ramar and Subbiah, Village Assistants (Retired), be paid pension taking into the account of service rendered by them prior to 01.06.1995 from the date of issue of order as a special case, this case will not be taken as a precedent to any other case in future."

12. Despite consequential Government orders and judgments implementing several judgment of this Court in similar Writ Petitions filed by "Thalayari / Village Assistant", the learned counsel appearing for the first respondent referred to the counter affidavit of the first respondent and submitted that the Government introduced Tamil Nadu Village Assistants' Pension Rules 1995, and brought them under the Special time scale of pay. It is further submitted by the learned counsel for the respondents that the petitioners are not entitled to rely upon the Tamil Nadu Pension



Village Assistants' Pension Rules, 1995. Even the judgment referred above, would indicate that the provisions of Tamil Nadu Village Assistants' Pension Rules 1995, provide for computing the length of service that was rendered by the petitioners therein as temporary, officiating and permanent service as qualifying service.

13. This Court is not inclined to accept the stand taken by the respondents in their counter affidavit. As a result, all the above Writ Petitions are allowed. The respondents are directed to pay pension as per the Tamil Nadu Pension Rules, 1978, by taking into account of the period of service rendered by the petitioners prior to 01.06.1995 for the purpose of calculating pension. The respondents are directed to complete this exercise within a period of three months from the date of receipt of a copy of this order.

14. With the above direction, these Writ Petitions are allowed. No costs.

Sd/-

Assistant Registrar(Writs)

/True Copy

Sub-Assistant Registrar

To

1. The Accountant General (A&E), Pension,
No.391, Anna Salai, Chennai.
 2. The District Collector, Tirunelveli District,
Tirunelveli.
 3. The Tahsildar, Sankarankovil Taluk,
Sankarankovil Taluk, Tirunelveli District.
- +One cc to Mr.P.Krishna Samy, Advocate, SR.No.65179
+One cc to Mr.P.Gunasekaran, Advocate, SR.No.65042
cmr/gsp
RL/6C/8P/KP/SAR1/31/7/2017

Pre-Delivery order

made in

W.P. (MD) Nos.12521 to 12527 of 2016

13.07.2017