



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.07.2018

CORAM:

**THE HONOURABLE MR.JUSTICE M.DURAI SWAMY
and
THE HONOURABLE DR.JUSTICE ANITA SUMANTH**

**W.A(MD)Nos.898 to 904 of 2018
and
C.M.P. (MD)Nos.5788 to 5792 and 5795 to 5802 of 2018**

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,
Tirunelveli District. ... Appellants/Respondents
(in all WAs)

Vs.

Udaiyar	...	Respondent/Petitioner in WA(MD).No.898 of 2018
Vallinayagam	...	Respondent/Petitioner in WA(MD).No.899 of 2018
Gurusamy Thevar	...	Respondent/Petitioner in WA(MD).No.900 of 2018
Arulappan	...	Respondent/Petitioner in WA(MD).No.901 of 2018
Thangapandian	...	Respondent/Petitioner in WA(MD).No.902 of 2018
Visuvasam	...	Respondent/Petitioner in WA(MD).No.903 of 2018
Muthaiah	...	Respondent/Petitioner in WA(MD).No.904 of 2018

Common Prayer: Writ Appeals filed under Clause 15 of the Letter Patent against the order, dated 13.07.2017 made in W.P.(MD) Nos.12521 to 12527 of 2016 passed by this Court.

Prayer in WP(MD).Nos. 12521 to 12527/ 2016 :

Writ Petitions are filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing the Respondents to sanction the Pensionary benefits to the Petitioner from the date of retirements



calculating the Petitioners service from the Petitions dated of appointment based on the Petitioners representation dated 05.01.2016 made to the Respondents.

For Appellants

in all Writ appeals : Mr.A.K.Baskara Pandian
Special Government Pleader

For Respondent

in all Writ appeals : Mr.S.Visvalingam
for Mr.P.Krishnasamy

COMMON JUDGMENT

(Judgment of the Court was delivered by **M.DURAISWAMY, J.**)

Challenging the common order passed in W.P.(MD)Nos.12521 to 12527 of 2016, dated 13.07.2017, the State has filed the above writ appeals.

2. The respondents/petitioners filed the writ petitions to issue a Writs of Mandamus to direct the respondents to sanction the pensionary benefits to them from the date of retirement calculating the petitioners' service from the date of appointment, based on the petitioners' representation dated 05.01.2016.

3. The learned Single Judge, by order dated 13.07.2017, allowed the writ petitions and directed the appellants/respondents to pay pension as per the Tamil Nadu Pension Rules, 1978, by taking into account the period of service rendered by the respondents/writ petitioners prior to 01.06.1995 for the purpose of calculating the pension. Challenging this order, the respondents in the writ petitions have filed the above Writ Appeals.

4. Heard Mr.A.K.Baskara Pandian, learned Special Government Pleader appearing for the appellants and Mr.S.Visvalingam, learned Counsel appearing for the respondents.

5. When the matters were taken up for hearing, the learned Special Government Pleader appearing for the appellants/respondents fairly submitted that the issue involved in the present writ appeals are covered by the decision made by the Division Bench of this Court, dated 20.08.2010 in W.A.(MD)No.363 of 2010, wherein the Division Bench held as follows:

"4. The payment of Pension and Gratuity is governed by Chapter II of the Tamil Nadu Village Assistants' Pension Rules, 1995. Rule 4(a) of the said

Rule reads thus:-

"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."

5. Admittedly, the respondents were appointed on temporary basis on 30.11.1954, 18.02.1972 and 20.03.1962 respectively and retired from service on 30.09.1996, 30.09.1996 and 30.06.1996 respectively after completing more than ten years of service. The question as to the entitlement of pension in respect of temporary employees came up for consideration before this Court in **Chinna Alagi, O.A. v. State of Tamil Nadu** reported in **2006 (5) CTC 320**, wherein, in paragraph No.7, it has been held as follows:

"7. As far as the rejection of the petitioner's claim on the ground that he is a contingent staff is concerned, as per G.O.Ms.No.437, Finance (Pension) Department dated 23.06.1988, which is referred in the impugned order, service rendered as a contingent staff can be taken into account for calculating the qualifying service for grant of regular pension. As far as the petitioner is concerned, he had retired from service prior to this Government Order. But, the object of granting pension is to enable the retired Government Servant to have means of livelihood till his or her death. Admittedly, the petitioner had served, even as per the impugned order, for a period of 21 years. But, throughout, he was kept as a contingent staff. Since there was a need, without break, continuously, the petitioner was allowed to work for a period of 21 years. In spite of 21 years of service, since he was retained as a contingent staff, certainly, he could not have received the pay paid to regular employees. Having extracted work from an employee for a period of 21 years and retaining him as a contingent staff in spite of the need for his service and denying the due benefits, which he would have received otherwise, that too, in the matter of sanitary workers, who are last grade servants in the Panchayat Union is, in my opinion, unsustainable."

6. Similarly, in **A.P.Srivastava v. Union of India and ors.**, reported in **1996 (1) LLJ 241**, the Hon'ble Supreme Court has held as follows:

"Pension is not a charity or a bounty nor it is conditional payment solely dependent on the sweet will of the employer. It is earned for rendering a long service and is often described as deferred portion of payment for past services. It is in fact in the nature of social security plan provided for a superannuated Government Servant. If a temporary Government Servant



who has rendered 20 years of service is entitled to pension, if he voluntarily retires, there is no justification for denying the right to him when he is required to retire by the employer in the public interest. In other words, the condition precedent for being entitled to pension in case of a temporary Government Servant is rendering of 20 years of service."

7. The learned Single Judge had allowed the said Writ Petition placing reliance on the above Judgments. In view of the above, we do not find any reason to interfere with the order of the learned Single Judge. Therefore, the Writ Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed."

6. Further the learned Special Government Pleader submitted that the appellants/respondents have also implemented the order passed on the earlier occasion by passing a Government Order in G.O.Ms.No.173, dated 29.05.2014.

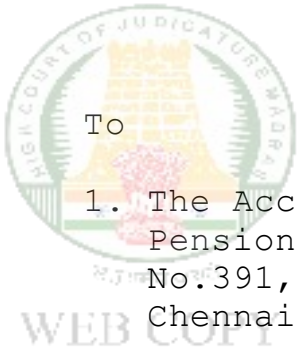
7. It was also brought to the notice of this Court by the learned Counsel appearing for the respondents/writ petitioners that the issue was also decided by the Honourable Apex Court in S.L.P.Nos.26586 to 26593 of 2012 filed as against the judgment passed in W.A.(MD)Nos.204 to 211, dated 14.02.2011. The Honourable Supreme Court had confirmed the judgment made in the said writ appeals. Therefore, the issue involved in the present writ appeals was also decided by the Honourable Apex Court as well as by the Division Bench of this Court. The learned Counsel appearing for the respondents / writ petitioners submitted that following the earlier judgment made by the Division Bench of this Court, the Writ Appeals may be dismissed.

8. Since the issue was already decided by the Honourable Apex Court as well as by the Division Bench of this Court, we find no reason to interfere with the order passed by the learned Single Judge. Accordingly, the Writ Appeals are dismissed. No costs. Consequently, the connected Civil Miscellaneous Petitions are also dismissed.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar(CS-II)



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,
Tirunelveli District.

+ 1 cc TO Mr.R.Krishnasamy , Advocate in SR No. 73990

+ 1 cc TO The Special Government Pleader in SR No. 73513

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AE/SKN RSK/SAR2/26.07.2018/5P/6C

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