



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.09.2018

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH

AND

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

W.A.(MD)Nos.1065 to 1067 of 2018

and C.M.P. (MD) No.7437 of 2018 in W.A.(MD) No.1065 of 2018

and C.M.P. (MD) Nos.7438 and 7439 of 2018 in W.A.(MD)No.1066 of 2018

and C.M.P. (MD) Nos.7440 and 7441 of 2018 in W.A.(MD)No.1067 of 2018

- 1.The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Revenue Department,
Secretariat,
Chennai - 600 009.
- 2.The Additional Chief Secretary and
Commissioner of Revenue Administration,
Ezhilagam,
Chepauk,
Chennai - 600 005.
- 3.The District Collector,
Madurai District,
Madurai.

... Appellants/Respondents
(In all WAs)

Vs.

M.Paranthaman

... Respondent/Petitioner
(in W.A.(MD) No.1065 of 2018)

L.Sathiyamoorthi

... Respondent/Petitioner
(in W.A.(MD) No.1066 of 2018)

K.Subbiah

... Respondent/Petitioner
(in W.A.(MD) No.1067 of 2018)

Writ Appeals filed under Clause 15 of Letter Patent against the order passed by this Court in W.P.(MD)Nos.19807 to 19809 of 2014 dated 22.01.2018.

Prayer in WP(MD). 19807 to 19809 of 2014 :

Petitions is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the first and third respondents i.e., The Principal Secretary to Government, Revenue Department, Chennai and The District Collector, Madurai to send revised pension proposals to the Accountant General, Chennai calculating half of the services put in by the petitioner as Karnam headman respectively within a specified time frame that may be fixed by this Court.



For Appellants in all the
appeals

: Mr.A.K.Baskara Pandian
Special Government Pleader

For Respondent in all the
appeals

: Mr.S.Visvalingam

COMMON JUDGMENT

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

Considering a common issue is involved in these Writ Appeals, they are disposed of by this common judgment.

2.In these cases, the issue involved is with respect to counting of 50% of the services rendered by the writ petitioners in the erstwhile post of Karnam. The learned Single Judge by following the earlier orders was pleased to allow the writ petitions. We find the issue involved is no longer *res integra*. There are number of decisions covering the issue. One of the case being in W.P.(MD) No.16786 of 2013, in which one of us (MMSJ) after taking note of the earlier orders was pleased to pass the following order:

"4. A perusal of the appointment order filed by the petitioner dated 10.07.1975 by the proceedings of the fourth respondent would show that it has been made on a permanent basis. The said proceedings dated 10.07.1975 clearly states that the appointment has been made as per the Tamil Nadu Village Assistants Pension Rules 1970 on a permanent basis. Even assuming that the petitioner is a part time employee, the said issue has already been considered by the Hon'ble Division Bench of this Court in W.A.(MD).No.16 of 2009 dated 16.02.2009, wherein, it has been held as follows:-

"5.The following fact remains from the record and for that, we are not able to appreciate the arguments made on behalf of the State. G.O.Ms.No.1914, dated 19th April, 1973, relied on behalf of the appellants relates to bifurcation of villages and appointment of additional staff, proposal of which were approved and the notification attached to the same is applicable to those who were on service as on 19th April, 1973 not to the employees appointed subsequently. The question whether the nature of appointment is part-time with honorarium or temporary in scale of pay not only depends upon rules and guidelines but also depends on the letter of appointment issued in favour of the employee concerned.

...

6.The persons who were appointed as per the proceedings dated 21st July,1975 cannot be guided pursuant to the order dated 21st July,1975. The notification contained in G.O.Ms.No.625, Revenue Department, dated 6th July,1995. Even the said Government Order says that the services of persons appointed as part-



time Village Assistants were regularized in the time scale of pay of Rs.600-10750. If the Writ Petitioner was appointed on 21st July, 1975, along with others, on temporary basis in the scale of pay fixed for Village Assistants, the respondents cannot deny pensionary benefits to the Writ Petitioner and others who were so appointed along with him, giving reference to G.O.Ms.No.625, Revenue Department, dated 6th July, 1995, as payment of pension is guided by statutory rule. Therefore, the said Government Order 625, Revenue Department, dated 6th July, 1995 is applicable only to those who were initially appointed as part-time Village Assistants and subsequently given Full Time appointment by providing scale of pay to the post of Village Assistants at Rs.600-10-750 and not to those, like the petitioner, who were already temporary Village Assistants in the regular scale of pay.

....

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."

5. In view of the said decision rendered by the Hon'ble Division Bench of this Court, I am of the view that the Writ Petition will have to be allowed. Accordingly, the impugned order is set aside and this Writ Petition is allowed and consequently, the respondents 1 and 2 are directed to pay the entire pension to the petitioner by taking into consideration of his entire period of service from 10.07.1975 to 30.05.2005 and pass appropriate orders within a period of 12 weeks from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petition is closed. No costs.

6. After the orders were passed, the learned Standing Counsel appearing for the first respondent made a mention and thereafter, the Writ Petition is taken up once again on 11.02.2014. The learned counsel submitted that the appointment of the petitioner is a part time, and therefore, he is not entitled for the relief sought for. His services were regularized only with effect from 31.05.1995. A further submission has been made that the services of the petitioner are not governed by the Tamil Nadu Village Assistants Pension Rules, 1970.

7. The said contention of the learned Standing Counsel appearing for the first respondent cannot be accepted for the reason that since the applicability of the relevant Rules and the nature of the appointment of similarly placed persons, like that of the petitioner having been appointed through the very same Government Order and as the



issue in question has already been dealt with elaborately by a Division Bench of this Court in W.A.(MD).No.16 of 2009, dated 16.02.2009, this Court is not inclined to accept the contention of the learned Standing Counsel for the first respondent.

8. The further contention of the learned Standing Counsel that the first respondent herein is not a party to the earlier order passed by this Court cannot be accepted, as the decision rendered thereon binds the nature of the arguments raised before this Court in the present Writ Petition. In any event, I find no merit in the contention of the learned counsel for the first respondent and his further submission made on 11.02.2014, subsequent to the allowing of this Writ Petition, stands rejected."

It was also followed by other learned Single Judges. As against the order of a learned Single Judge in W.P.(MD) No.11094 of 2008 etc appeals were filed and the order of the learned Single Judge was confirmed by the Division Bench in W.A.Nos.204 to 211 of 2011. Special Leave Petitions were also filed and rejected. At that point of time Government Orders in G.O.(Ms.)No.173 Revenue [Ser8(1)] Department dated 29.05.2014, restricting the relief only to those who filed the writ petitions has been passed. The following paragraph of the said Government Order would be apposite:

"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 6.3.2009 in W.P.(MD) Nos.11094 to 11101/2008 filed by Tvl.K.Ponnugurusamy and 7 others Village Assistants (retired), and accordingly directed that the petitioners Tvl's K.Ponnugurusamy, K.Muthiah, V.Chinna Mariappan, R.Muthiah, S.Rasu Thevar, S.Chakkan, G.Ramar and K.Subbaiah, Village Assistants (retired), be paid pension taking into the account of service rendered by them prior to 1.6.1995 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."

This was again put into challenge before the Division Bench of this Court and the Division Bench was pleased to set aside the aforesaid order restricting it only to those who filed the writ petitions earlier. In this connection the following paragraph in W.A.(MD) No.949 of 2018 dated 16.07.2018 would be apposite:

"7.Considering the above stated facts and circumstances, the Writ Appeal is allowed in part only by modifying the direction issued by the writ court to the effect that the first appellant shall count 50% of the service rendered by the petitioner in the post of Thalayari from 27.06.1979 till 01.06.1995 for the purpose of calculating the pensionary benefits. In all other respect, the order passed by the writ court shall not stand unaltered. Since this Court is modifying the said order passed by the Writ Court, as stated supra, the first appellant shall complete such exercise within a period of four weeks from the date of receipt of a copy of this judgment. The appellants



are directed to pay the benefits to the respondents within a period of 12 weeks from the date of receipt of a copy of this order. No costs. Consequently, C.M.P.(MD) No.6301 of 2018 is closed."

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3. In such view of the matter, these Writ Appeals stand dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar (T & P)

// True Copy //

Sub Assistant Registrar (CS-I)

To

1. The Principal Secretary to Government,
The State of Tamil Nadu,
Revenue Department,
Secretariat,
Chennai - 600 009.
2. The Additional Chief Secretary and
Commissioner of Revenue Administration,
Ezhilagam,
Chepauk,
Chennai - 600 005.
3. The District Collector,
Madurai District,
Madurai.

+3 CC To MR., Advocate SR. NO. 84628 to 84630
+1 CC TO The Special Government Pleader SR.NO. 84755

W.A. (MD) Nos. 1065 to 1067 of 2018
17.09.2018

sj

TR/RP/SAR-I (17.10.2018) 5P 8C