

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 20.03.2019

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN**W.P(MD)Nos.6590 to 6592 of 2015**
and M.P(MD)Nos.1 to 1 of 2015

K.Mohammed Abdul Wahab ... Petitioner in W.P(MD)No.6590/2015
G.Russel ... Petitioner in W.P(MD)No.6591/2015
S.Bagavathi Perumal ... Petitioner in W.P(MD)No.6592/2015

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary,
Revenue Department,
St. George Fort,
Chennai - 600 009.

2.The District Collector,
Nagercoil,
Kanyakumari District.

3.The Tahsildar,
Thovalai Taluk,
Thovalai,
Kanyakumari District.

... Respondents in all W.Ps'

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus, directing the respondents to refix the pension of the petitioners, by considering the petitioners' entire period of service ie., from 10.11.1975 to 30.09.2007; 12.09.1980 to 31.05.2014 and 04.12.1985 to 31.03.2009 respectively on par with various Judgments made by this Court and further direct the respondents to sanction all pensionary benefits to the petitioners.

For Petitioner : Mr.C.Kishore
(In all W.Ps')

For Respondents : Mr.C.M.Mari Chelliah Prabhu,
(In all W.Ps') Additional Government Pleader.

**COMMON ORDER**

These Writ Petitions have been filed seeking issuance of a writ of Mandamus, to direct the respondents to refix the pension of the petitioners, by considering the petitioners' entire period of service and to sanction all the pensionary benefits to the petitioners.

2. Heard the learned counsel appearing for the petitioners and the learned Additional Government Pleader appearing for the respondents.

3. The case of the petitioners is that they entered into the service of the third respondent on 08.11.1975, 08.09.1980 and 04.12.1985 respectively and they retired from service on attaining the age of superannuation. After their retirement, the petitioners had made request for re-fixation of pension and sanction of all the pensionary benefits, by considering the petitioners' entire period of service. Seeking such benefits, they made representations to the respondents on 12.03.2015 and the same are pending for consideration. Hence, the petitioners have filed the present Writ Petitions.

4. The learned counsel appearing for the petitioners submitted that in similar circumstances, this Court, passed orders in ***W.P (MD) No.12776 of 2012 (C.Chellam Vs. The Principal Accountant General (A & E), 361, Teynampet, Annasalai, Chennai - 600 018) on 25.03.2014***, directing the respondents therein to pay the entire pension to the petitioner therein by taking into consideration of his entire period of service from 21.07.1975 to 30.09.2004 within a period of 12 weeks. It would be useful to refer the operative portion of the order, which reads as follows:

"5. Whether the petitioner is a part-time employee or a temporary employee or a part-time employee with honorarium payment, the issues went to a scrutiny of the Hon'ble Division Bench of this Court in W.A(MD) No.16 of 2009, dated 16.02.2009, wherein, in paragraph Nos.5, 6 and 9, 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

but also depends on the letter of appointment issued in favour of the employee concerned.

....



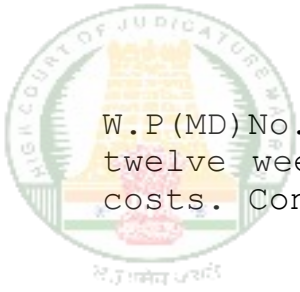
6. The persons who were appointed as per the proceedings dated 21st July, 1975 cannot be guided pursuant to the order of regularisation contained in G.O.Ms.No.625, Revenue Department, dated 6th July, 1995. Even the said Government Order says that the services of persons appointed as part-time Village 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 Assistants and subsequently given Full Time appointment by providing scale of pay to the post of Village Assistants at Rs.600-10750 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."

6. 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 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 21.07.1975 to 30.09.2004 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."

Thus, the learned counsel prayed for a similar order in this Writ Petition as well, for which, the learned Additional Government Pleader appearing for the respondents has no serious objection.

5. In view of the above, these Writ Petitions stand disposed of with a direction to the respondents to consider the representations of the petitioners, dated 12.03.2015 and pass appropriate orders, on the same line as observed in the order passed by this Court in



W.P(MD)No.12776 of 2012, dated 25.03.2014, within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

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Sd/-

Assistant Registrar (P & A)

// True Copy //

Sub Assistant Registrar (CS)

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To

1.The Secretary,
Rep. by the Government of Tamil Nadu,
Revenue Department,
St. George Fort,
Chennai - 600 009.

2.The District Collector,
Nagercoil,
Kanyakumari District.

3.The Tahsildar,
Thovalai Taluk,
Thovalai,
Kanyakumari District.

+3CC TO MR.C.KISHORE, Advocate Sr. No.55723

+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 55948

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20.03.2019**

TR (23.04.2019) 4P 8C