



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.11.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD) Nos.6568 to 6570, 13007 of 2017 and 13349 of 2018

and

W.M.P. (MD) Nos.5151 to 5155, 10073 of 2017 and 12154 and 12155 of 2018

WP (MD) . No.6568/ 2017

P.Kathiresan Watchman

... Petitioner

- Vs. -

1.The State of Tamil Nadu
Represented . by its Secretary,
Department of Municipal and Water Supply Department,
Fort St.George, Chennai - 600 009.

2. The Director,
Local Fund Audit Department,
4th Floor, Kuralagam, Chennai 600 108.

3. The Director of Town Panchayat,
Kuralagam Buildings,
Chennai - 600 108.

4. The Assistant Director Local Fund Audit Department,
Nagercoil, Kanyakumari District.

5. The Assistant Director Town Panchayat,
Collectrate Campus, Nagercoil,
Kanyakumari District.

6. The Commissioner
Nagercoil Municipality,
Kanyakumari District.

... Respondents

Prayer in WP (MD) . No.6568/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings issued by the 6th respondent Commissioner vide impugned proceedings in Na.Ka.No.116672/2016/C2 dated 24.10.2016, Quash the Same, and further Direct the respondents herein to sanction and disburse forthwith the pension benefits due to the



petitioner viz., the General Provident Fund, Gratuity, Pension admissible to the petitioner with penal interest at the rate of 18% and pass such further or other suitable Order/Orders as this Hon'ble Court.

for Petitioner

: T.Cibi Chakraborty,
for Isaac Chambers

For Respondents

: Mr.C.M.Mari Chelliah Prabhu,
Additional Government Pleader
for R1 to R5

: Mr.P.AthimoolaPandian for R6

WP (MD) . No.6569/ 2017

P.Thurai Nadar

... Petitioner

- Vs. -

1. The State of Tamil Nadu
Represented . by its Secretary,
Department of Municipal and Water Supply Department,
Fort St.George, Chennai - 600 009.

2. The Director,
Local Fund Audit Department,
4th Floor, Kuralagam, Chennai 600 108.

3. The Director of Town Panchayat,
Kuralagam Buildings,
Chennai - 600 108.

4. The Assistant Director Local Fund Audit Department,
Nagercoil,
Kanyakumari District.

5. The Assistant Director Town Panchayat,
Collectrate Campus, Nagercoil,
Kanyakumari District.

6.The Executive Officer,
Valvachakostam Town Panchayat,
Palliyadi Post,
Kanyakumari District.

... Respondents



Prayer in WP (MD) . No.6569/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings issued by the 6th respondent Executive officer in Na.Ka.No.305/2015/A1 dated 10.11.2016, Quash the Same, and further Direct the respondents herein to sanction and disburse forthwith the pension benefits due to the petitioner viz., the General Provident Fund, Gratuity, Pension admissible to the petitioner with penal interest at the rate of 18% and pass such further or other suitable Order/Orders.

for Petitioner : T.Cibi Chakraborty,
for Isaac Chambers

For Respondents : Mr.C.M.Mari Chelliah Prabhu,
Additional Government Pleader
for R1 to R6

WP (MD) . No.6570/ 2017

P.Kanmony ... Petitioner

- Vs. -

1.The State of Tamil Nadu
Represented . by its Secretary,
Department of Municipal and Water Supply Department,
Fort St.George, Chennai - 600 009.

2. The Director,
Local Fund Audit Department,
4th Floor, Kuralagam, Chennai 600 108.

3. The Director of Town Panchayat,
Kuralagam Buildings,
Chennai - 600 108.

4. The Assistant Director Local Fund Audit Department,
Nagercoil,
Kanyakumari District.

5. The Assistant Director Town Panchayat,
Collectrate Campus, Nagercoil,
Kanyakumari District.

6. The Commissioner
Nagercoil Municipality,
Kanyakumari District.

... Respondents



Prayer in WP (MD) . No.6570/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Mandamus directing the respondents herein to sanction and disburse forthwith the pension benefits due to the petitioner viz., the General provident Fund, Gratuity, Pension admissible to the petitioner with penal interest at the rate of 18% and pass such further or other suitable Order/Orders.

for Petitioner : T.Cibi Chakraborty,
for Isaac Chambers

For Respondents : Mr.C.M.Mari Chelliah Prabhu,
Additional Government Pleader
for R1 to R5

: Mr.P.AthimoolaPandian for R6

WP (MD) . No.13007/ 2017

V.Sundara Moorthy

... Petitioner

vs

1.The State of Tamil Nadu
Represented . by its Secretary,
Department of Municipal and Water Supply Department,
Fort St.George, Chennai - 600 009.

2.The Director Local Fund Audit Department,
4th Floor, Kuralagam,
Chennai 600 108

3.The Commisisoner
Municipal Administration,
Chepauk, Chennai 600 105

4.The Commissioner
Thanjavur Corporation,
Thanjavur, Thanjavur District

5.The Assitant Director
Local Fund Audit Department,
Thanjavur, Thanjavur District

... Respondent



Prayer in WP (MD) . No.13007/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus directing the respondents herein to sanction and disburse forthwith the pension benefits due to the petitioner viz., the General Provident Fund, Gratuity, Pension admissible to the petitioner with penal interest at the rate of 18% and pass such further or other suitable Order/Orders.

for Petitioner : T.Cibi Chakraborty,
for Isaac Chambers

For Respondents : Mr.C.M.Mari Chelliah Prabhu,
Additional Government Pleader
for R1 to R5

WP (MD) . No.13349/ 2018

M.Vargeese

... Petitioner

Vs. -

1.The State of Tamil Nadu
Represented . by its Secretary,
Department of Municipal and Water Supply Department,
Fort St.George, Chennai - 600 009.

2.The Director Local Fund Audit Department,
4th Floor, Kuralagam, Chennai 600 108

3.The Assistant Director
Office of the Director,
Local Fund Audit Department,
4th Floor, Kuralagam, Chennai - 600 018.

4. The Director of Town Panchayat,
Kuralagam Buildings, Chennai - 600 108.

5.The Assistant Director
Local Fund Audit Department,
Nagercoil, Kanyakumari District.

6.The Assistant Director Town Panchayat,
Collectrate Campus, Nagercoil, Kanyakumari District.



7. The Executive Officer
Aaloor Town Panchayat,
Kanyakumari District.

... Respondents

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Prayer in WP (MD) . No.13349/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings issued by the 3rd respondent Assistant Director vide proceedings in Mu.Mu.No.14890/Pae/O/Sa(1)/2017 dated 26.03.2018, Quash the same and further direct the respondents herein to sanction and disburse forthwith the pension benefits due to the petitioner viz., the General Provident Fund, Gratuity, Pension admissible to the petitioner with penal interest at the rate of 10% and pass such further or other suitable Order/Orders.

for Petitioner : T.Cibi Chakraborty,
for Isaac Chambers

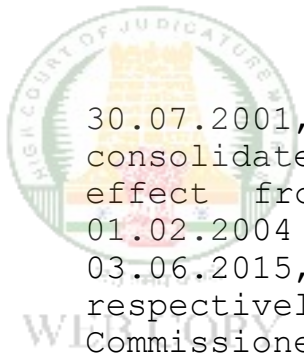
For Respondents : Mr.C.M.Mari Chelliah Prabhu,
Additional Government Pleader
for R1 to R7

COMMON ORDER

The order dated 24.10.2016, 10.11.2016 and 26.03.2018 issued by the Commissioner, Nagercoil Municipality, Kanyakumari District, the Executive Officer, Valvachukostam Town Panchayat, Palliyadi Post, Kanyakumari District and the Assistant Director, Local Fund Audit Department, Chennai respectively, are sought to be quashed in W.P.(MD)Nos.6568, 6569 of 2017 and 13349 of 2018. Further direction is sought for to direct the respondents to sanction and disburse forthwith the pensionary benefits due to the petitioners viz., the General Provident Fund, Gratuity, Pension admissible to the petitioner with penal interest at the rate of 18%, 18% and 10% respectively.

2.W.P.(MD)Nos.6570 and 13007 of 2017 have been filed to direct the respondents to sanction and disburse forthwith the pensionary benefits due to the petitioners viz., the General Provident Fund, Gratuity, Pension admissible to the petitioners with penal interest at the rate of 18%.

3.According to the petitioners, they were appointed on 01.09.1986, 03.10.1979, 27.03.1976, 07.11.1979 and 18.06.1984 respectively, on daily wage basis. Subsequently, when a permanent vacancy arose, the petitioners were appointed on 02.08.2001,

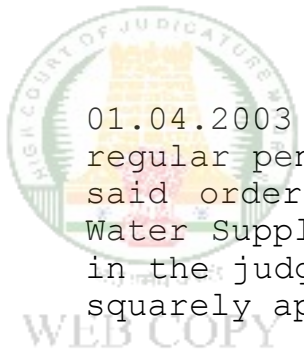


30.07.2001, 02.08.2001, 01.09.2000 and 25.01.2001 respectively, on consolidated pay. The petitioners' services were regularized with effect from 03.08.2004, 23.06.2006, 23.06.2006, 23.02.2006 and 01.02.2004 respectively. The petitioners retired from service on 03.06.2015, 31.05.2012, 30.06.2011, 30.04.2013 and 29.05.2015 respectively, on attaining the age of superannuation. The concerned Commissioner / Executive Officer did not send the proposal for pension. Therefore, the petitioners gave various representations and the same have not been considered by the respondents. In the mean time, the impugned orders dated 24.06.2016, 10.11.2016 and 26.03.2018, have been passed, rejecting the request of the petitioners and stated that the petitioners are not entitled for pension as per G.O.Ms.No.259, Finance (Pension) Department, dated 06.08.2003. The issue involved in the present Writ Petitions is no longer *res integra*. Hence, the petitioners have filed these Writ Petitions, challenging the said orders.

4.The learned Additional Government Pleader appearing for the official respondents submitted that G.O.Ms.No.259, is applicable only to the employees, who were appointed on or after 01.04.2003. In the similar issue, the State Government has filed S.L.P.(C) No.38123 of 2018 before the Hon'ble Apex Court and obtained interim orders and prayed for dismissal of the Writ Petition.

5.Heard the learned counsel appearing for the petitioner, the learned Additional Government Pleader appearing for the official respondents and the learned counsel appearing for the private respondents and perused the materials available on record carefully.

6.From the materials on record, it is seen that the petitioners were initially appointed on daily wage basis. Subsequently, when a permanent vacancy arose, they were appointed on consolidated pay in a permanent vacancy. The petitioners were brought under time scale of pay on consolidated pay and retired from service, on attaining the age of superannuation. The date, on which the petitioners were brought under time scale of pay, is not a criteria for the purpose of granting pension. The date of appointment has to be taken into consideration to decide whether the petitioners are entitled for pension or not. In the present case, the petitioners were appointed on 01.09.1986, 03.10.1979, 27.03.1976, 07.11.1979 and 18.06.1984 respectively, on daily wage basis. Their services were regularized on 03.08.2004, 23.06.2006, 23.06.2006, 23.02.2006 and 01.02.2004 respectively. In view of the said appointment of the petitioners on 01.09.1986, 03.10.1979, 27.03.1976, 07.11.1979 and 18.06.1984 respectively, G.O.Ms.No.259, Finance (Pension) Department, dated 06.08.2003, is not applicable to the case of the petitioners, as the case may apply only to the persons, who are appointed on or after 01.04.2003. The Division Bench of this Court in the judgment dated 30.09.2015 in W.A.(MD) No.1026 of 2015 has held that the persons, who were appointed before



01.04.2003 and regularized on or after 01.04.2003, are entitled to regular pension. Subsequently, the respondents have implemented the said order by issuing G.O.Ms.No.259, Municipal Administration and Water Supply Department, dated 17.06.2016. The said ratio mentioned in the judgment dated 30.09.2015 made in W.A.(MD)No.1026 of 2015, is squarely applicable to the facts of the present cases.

7.For the above reasons, these Writ Petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)

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Sub Assistant Registrar(CS)

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To

1. The Secretary
The State of Tamil Nadu
Department of Municipal and Water Supply Department,
Fort St.George, Chennai - 600 009.
2. The Director, Local Fund Audit Department,
4th Floor, Kuralagam, Chennai 600 108.
3. The Director of Town Panchayat,
Kuralagam Buildings, Chennai - 600 108.
4. The Assistant Director Local Fund Audit Department,
Nagercoil, Kanyakumari District.
5. The Assistant Director Town Panchayat,
Collectrate Campus, Nagercoil, Kanyakumari District.
6. The Commissioner
Nagercoil Municipality, Kanyakumari District.
- 7.The Assistant Director
Office of the Director,
Local Fund Audit Department,
4th Floor, Kuralagam, Chennai - 600 018.
8. The Executive Officer
Aaloor Town Panchayat, Kanyakumari District.



9. The Commisisoner, Municipal Administration,
Chepauk, Chennai 600 105

10. The Commissioner
Thanjavur Corporation, Thanjavur District

11. The Assitant Director ,Local Fund Audit Department,
Thanjavur, Thanjavur District

12. The Executive Officer,
Valvachakostam Town Panchayat,
Palliyadi Post, Kanyakumari District.

+5 CC to M/s.T.CIBI CHAKRABORTHY, Advocate (SR-97178[F] dated
11/11/2019)

+1 CC to M/s.SPL GP (SR-97753[F] dated 12/11/2019)

W.P. (MD) Nos.6568 to 6570, 13007 of 2017 and 13349 of 2018
08.11.2019

srk(CO)
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