



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **01.10.2020**

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD)No.13209 of 2020

P.Senthurpandian

...Petitioner

-Vs-

1.The Principal Accountant General (A&E) Pension,
391, Anna Salai,
Chennai-1.

2.The District Collector,
Tenkasi District,
Tenkasi.

3.The Tahsildar,
Sankarankovil,
Tenkasi District.

...Respondents

Prayer: Writ Petition - filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, directing the respondents 2 & 3 to send revised Pension Proposal to the 1st respondent calculating half of the service put in by the petitioner as Village Assistant from 18.04.1981 to 01.06.1995 within a specified time frame that may be fixed by this Court.

For Petitioner	: Mr.T.S.Mohamed Mohideen
For R1	: Mr.S.Mahalakshmi
For R2 & R3	: Mr.J.Padmavathi Devi, Special Government Pleader

ORDER

The prayer sought for in this writ petition is for a Writ of Mandamus, directing the respondents 2 & 3 to send revised Pension Proposal to the 1st respondent calculating half of the service put in by the petitioner as Village Assistant from 18.04.1981 to 01.06.1995 within a specified time frame that may be fixed by this Court.

2. The petitioner was appointed as Village Assistant, which post earlier called as Thalayari or Vetti, on 18.04.1981, on consolidated pay and had been working in that capacity till 31.05.1995. From 01.06.1995 the petitioner was brought under regular time scale of pay and accordingly working some years and retired from service on 31.01.2019. After retiring the service, the petitioner was given pension only calculating the service rendered by him from 01.06.1995 onwards, but the service earlier rendered by him from the date of appointment i.e., from 18.04.1981 to 31.05.1995 was not taken into account for the purpose of calculating the total pensionable service.



3. I have heard Mr.T.S.Mohamed Mohideen, learned counsel appearing for the petitioner who would submit that, in this regard number of cases were filed as to whether previous service rendered by the similarly placed Village Assistants prior to 01.06.1995 can be taken into account for the purpose of pensionable service and the Courts have taken consistent view that atleast 50% of the service rendered by this kind of employees prior to 01.06.1995, who were brought under regular time scale of pay, can be taken into account as a total pensionable service and accordingly their pension can be revised. Many number of orders have been passed in this regard and I had an occasion to consider a batch of writ petitions in similar nature in W.P(MD)Nos.14245, 13660 to 13686, 8714, 6744 and 6745 of 2018, where I have passed the following the orders:-

"51.In view of these discussions and in view of the orders passed by this Court in number of cases, as has been referred to above and by taking into account the rule position in this regard and also taking into account the facts that, admittedly, all these petitioners had been appointed long back as Village Assistants and had been rendering service for several years before they have been brought under regular time scale of pay from 01.06.1995, this Court is inclined to pass the following order in all these cases:

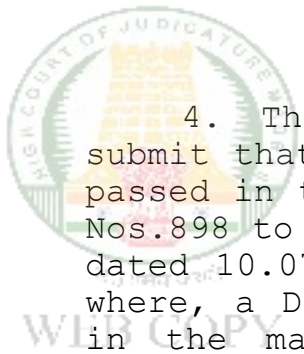
(i) The respondents are directed to consider the request of the petitioners for providing full or eligible pension, by reckoning the temporary, officiating and permanent service of the petitioners rendered by them prior to 01.06.1995, from the date of their respective appointment, as qualifying service, for computing the length of service for calculation of pension and gratuity ;

(ii) While calculating the said service, only 50% of the said service rendered by them from the date of appointment till 31.05.1995 shall alone be considered as qualifying service ; and

(iii) By calculating the said service, whatever the eligible pension for each of these petitioners that shall be calculated and the same, with arrears, shall be paid by the respondents to the respective petitioners, within a period of twelve weeks from the date of receipt of a copy of this order.

52.In view of the above directions, the impugned orders passed in W.P.(MD)Nos.8714, 6744 and 6745 of 2018 are hereby quashed and the matters are remitted in respect of the said writ petitions to comply with the aforesaid directions.

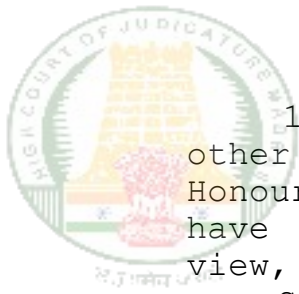
53.With these directions, all these Writ Petitions are ordered, accordingly. No costs."



4. The learned counsel appearing for the petitioner would submit that, thereafter a number of Division Bench orders have been passed in this regard in W.A(MD)Nos.204 to 211 of 2011 and W.A.(MD) Nos.898 to 904 of 2018. In fact, the aforesaid order of this Court, dated 10.07.2018 was appealed in W.A(MD)Nos.1254 and 1255 of 2019, where, a Division Bench, in a reported decision in 2020(1) CWC 252 in the matter of State of Tamil Nadu rep. by its Secretary, Department of Revenue and others vs. Chinna Karuppaiah, having gone through the entire issue, has ultimately upheld the decision of the Writ Court and dismissed the appeal. The relevant portion of the Division Bench order in the above cited judgment reads thus:-

"11. Therefore, in our considered view, the interpretation sought to be made before us by referring the Conduct Rules, 1983 and more particularly Rule 3 thereunder to state that all village servants are deemed to be part-time servants. However, this argument is not acceptable. More or less an identical issue was raised before the Honourable Division Bench in the case of the District Collector, Nagercoil and another vs. K.Raman Nair in W.A.No.16 of 2009 and the appeal filed by the State was dismissed and at this juncture, it would be relevant to take note of the following finding:

"7.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 regularised in the time scale of pay of Rs.600-10-750. 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.



12. Apart from the above decision, there are various other decisions of the Honourable Division Benches and Honourable Single Benches and many of which are stated to have been implemented. Therefore, in our considered view, the decision in the case of C.Chellaswamy and others vs. State of Tamil Nadu and Others in W.P(MD)Nos.3496 to 3498 of 2015, dated 10.07.2019, rejecting the prayer sought for in the writ petition does not lay down the correct legal principles. More so, in the light of the earlier decisions of the Honourable Division Benches as pointed out by us earlier, mere reference of Rule 3 of the Conduct Rules, which grants permission for part-time village servants to take up part-time work or occupation, will not term all the employments as part-time employments. Furthermore, the Government had taken into consideration the nature of working conditions and then took a policy decision to bring them into regular time scale of pay. Thus, considering all these factors, we are of the view that the order passed in the writ petitions does not call for any interference.

In the result, these writ appeals stand dismissed. No Costs. Consequently, connected Miscellaneous Petitions are closed."

5. Relying upon this decision, the learned counsel appearing for the petitioner would submit that, the petitioner also is similarly placed, as he has rendered service from 01.06.1995 to 31.01.2019 before he brought under regular time scale of pay, therefore, 50% of the said service can be taken into account and accordingly his pay pension has to be revised.

6. The said factual as well as the legal position is not in much controversy, according to the learned Special Government Pleader appearing for the respondents and he fairly submits that, a number of orders have been passed in that line and the Writ Court order dated 10.07.2018 has also been confirmed by the recent order of the Division Bench referred to above and hence, the benefit sought for by the petitioner can also be extended to him and accordingly, the writ petition can be disposed of.

7. The said fair submission made by the learned counsel appearing for the respondents is hereby taken on record. As has been rightly pointed out by the learned counsel for the petitioner, the issue raised herein is no more *res integra*, as number of cases has been decided more than once and most of orders, having been confirmed by the Division Bench, referred to above, this Court feels that, the petitioner also, who is similarly placed, would be entitled to get the same benefits.

8. In that view of the matter, this Court has no hesitation to hold that the petitioner is entitled to succeed in the writ



petition and accordingly, this Court is inclined to dispose of this writ petition, with the following direction:

"that the respondents are hereby directed to consider the request of the petitioner dated 05.03.2020 and accordingly pass necessary orders by calculating 50% of the service rendered by the petitioner from 18.04.1981 till 31.05.1995 along with pensionable service he has already rendered from 10.06.1995 to till his superannuation and based on which, total pensionable service shall be calculated and accordingly pension payable to the petitioner shall be revised and the revised pension shall be continued to be paid and so far arrears if any, shall also be disbursed to the petitioner. The aforesaid needful shall be undertaken by the respondents, within a period of eight (8) weeks from the date of receipt of a copy of this order.

9. With this observations and directions, the Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note:In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The District Collector,
Tenkasi District,
Tenkasi.

2.The Tahsildar,
Sankarankovil,
Tenkasi District.

+1cc to Mr.T.S.Mohamed Mohideen, Advocate Sr.No.18822
+1cc to SPL GP Sr.No.19093

Order made in

W.P. (MD) No.13209 of 2020

01.10.2020

VB (18.01.2021) 5P 5C

<https://hcservices.ecourts.gov.in/hcservices/>