



W.A.No.167 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 28.01.2025

CORAM

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN**

**W.A.No.167 of 2025
and
C.M.P.No.1197 of 2025**

1. The Secretary to Government,
Rural Development and Panchayat Raj Department,
Fort St.George,
Chennai - 600 009.
2. The Directorate of Rural Development,
Panagal Building,
Saidapet,
Chennai - 600 015.
3. The District Collector,
Ariyalur District,
Ariyalur.

... Appellants

-Vs-

1. T.Murugesan
2. The Director,
Local Fund Audit Department,
Saidapet, Chennai - 600 035.
3. The Block Development Officer,
Jayamkondam Panchayat Union,
Jayamkondam,
Ariyalur District - 621 802.

... Respondents



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PRAYER : Appeal filed under Clause 15 of Letters Patent, to set aside the order passed in W.P.No.29577 of 2023 dated 12.06.2024.

For Appellants : Mr.M.Alagu Gowtham
Government Advocate

For Respondents : Mr.N.K.Ponraj for R1

J U D G M E N T

(Judgment of the Court was delivered by **R.SURESH KUMAR, J.**)

This intra Court appeal has been directed against the order passed by the writ Court dated 12.06.2024 in W.P.No.29577 of 2023.

2. That the first respondent / writ petitioner was initially appointed as a Panchayat Union Night Watchman on a daily wage basis at the rate of Rs.7/- per day with effect from 12.09.1983. Thereafter, his pay was revised to Rs.12/- per day with effect from 30.04.1986 and Rs.19/- per day with effect from 18.08.1988.

3. Thereafter, the Jayamkondam Panchayat Union through a resolution passed by its Council vide Resolution No.139 of 1990 requested the creation of



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regular post. Upon considering the proposal submitted by the Panchayat Union, the District Collector and other authorities, the post was created with effect from 01.06.1988 by an order dated 29.09.1992 and therefore, the first respondent / writ petitioner had been permanently appointed in the said post which was created with effect from 01.06.1998 by conferring all the benefits including the backwages.

4. Subsequently, due to the audit objection that has been raised for grant of financial benefits from 01.06.1988, accepting the audit objection the appellant Department sought to recover the pay difference paid to the writ petitioner to the extent of Rs.33,004/- and the entire amount has been recovered from the first respondent / writ petitioner in 100 instalments.

5. Thereafter, the services of the first respondent / writ petitioner was continuing as a regular service and he had been granted the Selection Grade on completion of ten years with effect from 11.03.2002 and Special Grade on completion of twenty years with effect from 11.03.2012 and Super Grade with effect from 11.03.2022 on completion of 30 years of service.



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6. Further, the writ petitioner was also promoted as Office Assistant and during that stage since he attained superannuation has retired from service with effect from 31.03.2022.

7. Though the post has been permanently created with effect from 01.06.1988 by order dated 29.09.1992, in the said permanent post, the writ petitioner had been permanently absorbed or appointed and he had been continuing and all these thirty years of service he has earned Selection Grade, Special Grade and Super Grade also, unmindful of all these developments, the Block Development Officer, by his order dated 11.05.2007 has stated that, the writ petitioner had been appointed with effect from 16.09.1983 and he has been continuously working on temporary basis, therefore in order to regularize his services with effect from 16.09.1983, a proceedings to that effect dated 11.05.2007 was passed by the Block Development Officer.

8. Be that as it may, after superannuation the petitioner since has retired, his pension proposal had been forwarded, which has been returned by stating that, as per G.O.(Ms)No.878, Rural Development and Local Administration Department dated 15.05.1981, after 01.04.1981, no new posts in the category of



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Contingent Establishment should be created and the vacancies should not be

filled up after 01.04.1981.

9. Despite the ban that has been issued by the Government through G.O.(Ms)No.878 dated 15.05.1981 since the post has been created where the writ petitioner was appointed, the said creation of the post itself is a wrong appointment according to the authority itself concerned, therefore, he is not entitled to get the pension, that is the stand appears to have been taken by the appellant Department against the writ petitioner at the time when he made a request to sanction the pension.

10. Only at that juncture, the writ petitioner had approached the writ Court by filing the said writ petition.

11. The writ Court, having considered all these factual matrix, has given a detailed order where the position that, the post has been created on permanent basis with effect from 01.06.1988 has been taken into account and even though by order dated 29.09.1992, such a post has been created the effect was given from 01.06.1988, therefore, the writ petitioner was entitled to get absorbed with effect from 01.06.1988 which has already been done. However, due to audit



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objection subsequently been made, an employer wanted to recover the excess

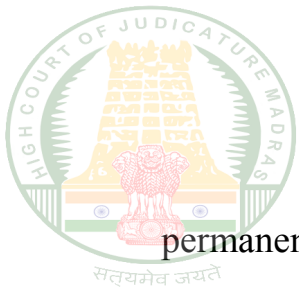
amount paid between 1988 and 1992 to the writ petitioner and a sum of

Rs.33,304/- also had been recovered from the petitioner in 100 instalments.

12. Assuming that the writ petitioner is not entitled to get the pay benefits on permanent post by way of time scale of pay between 01.06.1988 and 29.09.1992, that amount since has been recovered from the petitioner insofar as the other service benefits to take his service on permanent basis with effect from 01.06.1988, there could be no impediment, because the post has been created with effect from 01.06.1988.

13. If at all the post has been created by order dated 29.09.1992, if it goes against G.O.(Ms)No.878 dated 15.05.1981, that could have been immediately rectified or the post which has been created in favour of the writ petitioner with effect from 01.06.1988 should have been rectified.

14. Without indulging in any of such activities if the authorities now after extracting thirty years of work from a permanent employee shows the door saying that he is not entitled to get any retiral benefits like the pension etc., that would go against the very route of the matter because the post has been



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permanently created with effect from 01.06.1988 and the order dated 29.09.1992 still holds good as it has not been withdrawn or cancelled. Not only that, subsequently on completion of ten years of service, he has been conferred with Selection Grade, on twenty years, he has been conferred with Special Grade and on thirty years, he has been conferred with Super Grade. That apart, he was also promoted as Office Assistant before he reaches superannuation and retired from service on 31.03.2022.

15. All these proceedings since has been issued and all these thirty plus years since the writ petitioner has been continuously working in a permanent post created in this regard, it cannot at this juncture be stated that, the post itself should not have been created in view of G.O.(Ms)No.878 dated 15.05.1981. Such a reason now have been shown by the appellants is beyond the scope of the issue because the post has been consciously created with effect from 01.06.1988 and he has been made permanent by regularization of his services with effect from that date and subsequently the Selection, Special and Super Grades have been conferred and further promotion has also been given. All these activities undertaken by the appellant Department cannot be brushed aside by merely showing G.O.(Ms)No.878 as has been shown now against the writ petitioner.

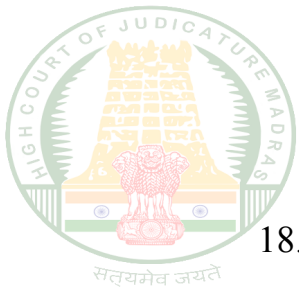


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16. These aspects have been considered in proper perspective by the learned Judge who has allowed the writ petition by giving a set of directions including the one that the Block Development Officer since has regularised the services of the petitioner with effect from 16.09.1983, the petitioner will be deemed to be in regular employment with effect from 29.09.1992 and therefore, the service he rendered from 29.09.1992 for which he is entitled to get the benefits of pension. The learned Judge also directed that between 16.09.1983 and 28.09.1992, 50% of his service shall be calculated for purpose of pensionary benefits.

17. Though the petitioner was appointed with effect from 16.09.1983 and his service has been regularised with effect from 01.06.1988 even though he is not entitled for backwages between 01.06.1988 and 29.09.1992, however his service since was in permanent nature from 01.06.1988, we are of the view that, such a benefit if at all to be calculated for the purpose of pensionary benefits on permanent basis, that shall be taken effect into from 01.06.1988 not from 28.09.1992.



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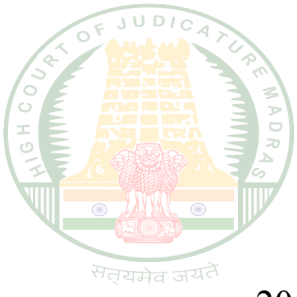
18. Despite this position, the learned Judge has allowed the writ petition only by giving a direction to take services of the writ petitioner only from 29.09.1992, therefore such a limited relief alone since the learned Judge has granted through the impugned order, absolutely there has been no scope for the appellants to challenge the same.

19. In that view of the matter, we are inclined to dispose of this writ appeal with the following orders:

(i) that the writ petitioner would be entitled to get pensionary benefits for his entire services from 29.09.1992 till his superannuation and also entitled to be calculated 50% of the services he rendered between 16.09.1983 and 28.09.1992, therefore, to that effect, the direction given by the learned Judge is upheld.

(ii) As a sequel whatever the pensionary benefits that shall be calculated and be paid to the first respondent / writ petitioner within a period of two months from the date of receipt of a copy of this order.

(iii) It is also to be noted that, within two months period, if the benefits as directed above is not paid to the writ petitioner / first respondent, it will carry the interest at the rate of 12% per annum as directed by the learned Judge in paragraph No.13(vii) of the order impugned.



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20. With all these directions, by upholding the order passed by the learned Judge which is impugned herein, this Writ Appeal is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(R.S.K., J.) (C.S.N., J.)

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NCC : Yes / No

Index : Yes / No

Speaking Order : Yes / No

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