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**(2014) 06 MAD CK 0128**

**In the Madras High Court**

**Case No :** Writ Petition Nos. 9197 and 9198 of 2014 and M.P. Nos. 1 and 2 of 2014 in Writ Petition Nos. 9197 and 9198 of 2014

K. Thangavelu

APPELLANT

Vs

The State of Tamilnadu

RESPONDENT

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**Date of Decision :** 23-06-2014

**Acts Referred:**

**Citation :** (2014) 06 MAD CK 0128

**Hon'ble Judges :** S. Nagamuthu, J

**Bench :** Single Bench

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## Judgement

S. Nagamuthu, J.—The petitioners were originally appointed as Part time Panchayat Assistants. Later on, they were absorbed as regular full time Panchayat Assistants. Now, the petitioners have retired. But, they have been denied pension, on the ground that they have not put in regular 10 years of pensionable service as required under the Tamil Nadu Pension Rules. Challenging the same, the petitioners are before this Court with these writ petitions.

2. I have heard the learned counsel for the petitioners and the learned Additional Government Pleader appearing for the respondents. By consent of the learned counsel for both parties, the writ petitions themselves have been taken up for final disposal.

3. The only contention of the petitioners in both the writ petitions is that the service rendered by the petitioners as Part time Panchayat Assistant should also be taken into account for the purpose of calculation of pension and out of the service rendered by the petitioners as part time Panchayat Assistants, 50% of the same is to be counted along with the service rendered by them as full time Panchayat Assistants. According to the learned counsel, this is based on G.O.Ms. No. 118 Finance (Pension Department) dated 14.02.1996.

4. But, in the case on hand, according to the petitioners, the service rendered by them as Part time Panchayat Assistants was not at all taken into account for the

purpose of pension. With this grievance, the petitioners are before this Court with these writ petitions.

5. In the counter, filed by the respondents, it is contended that as per Rule 11(2) of the Tamil Nadu Pension Rules, 1978, only half of the service paid from contingencies shall be allowed to be counted towards qualifying service for pension along with regular service. It is also stated that the petitioners were not appointed as full time Government servants and they were, as a matter of fact, engaged only as contingent employees with the pay of honorarium. Therefore, any service rendered by them as Part time Panchayat Assistants, cannot be taken into account for the purpose of pension.

6. The learned counsel for the petitioners would submit that this issue is no more res integra, as the same has been repeatedly held by this Court in various judgments. The learned counsel for the petitioner would refer to a judgment of a learned Single Judge of this Court (N. Paul Vasanthakumar, J) in K. Sampath v. The State of Tamil Nadu & others (2007 Writ L.R. 521) wherein, precisely, the same issue as it is pending before this Court, came up for consideration. In that case also, the petitioner therein was a retired Panchayat Assistant, who had earlier served as Part time Panchayat Assistant before his regularization as full time Panchayat Assistant. While deciding the said issue, the learned Judge had taken into account, the crux of G.O.Ms. No. 118 Finance (Pension Department) dated 14.02.1996 which speaks of three conditions to count half of the service rendered by the State Government employees under non-pensionable establishment, which are as follows:-

- (i) Service under non-pensionable establishment should have been in a job involving whole time employment;
- (ii) The service under non-pensionable establishment should have been on time scale of pay and
- (iii) The service under non-pensionable establishment should have been continuous and followed by absorption in pensionable establishment without break.

The learned Judge has held that as per Condition No. 3, the petitioner therein was entitled for pension as 50% of the service rendered as part time Panchayat Assistant for the purpose of pension to be counted.

7. In the case on hand also, the petitioners were all in continuous service as Part time Panchayat Assistants and without any break, they were absorbed as full time Panchayat Assistants. Admittedly, the service rendered by them as part time Panchayat Assistants is a non-pensionable establishment.

8. Having regard to all these facts and having also referred to a clarification issued by the Government under Letter dated 04.10.2000, this Court took the view that half of the service rendered by the petitioner therein as part time Panchayat Assistant should be counted for the purpose of pension. The learned

counsel has referred to another judgment of yet another learned Judge of this Court in *M. Pachiappan v. The Principal Conservator of Forest* (W.P. No. 12054 of 2011). That is a case of Plot Watcher. There also, the learned Judge has taken the view that the half of the service rendered by the petitioner therein as part time Plot Watcher should be counted for the purpose of pension. The learned counsel has also relied on a judgment of the Division Bench of this Court in *Government of Tamil Nadu v. M. Gopal* (W.A. Nos. 27 & 28 of 2012 dated 13.02.2012) wherein also, the Division Bench has upheld the judgment of the learned Single Judge thereby confirming the view taken. The learned counsel would rely on yet another judgment of a Division Bench of this Court in *The Principal Chief Conservator of Forests v. M. Pachiappan* (Writ Appeal No. 1611 of 2012 dated 24.07.2012) wherein also, the Division Bench again confirmed the view taken in *M. Pachiappan's* case (cited supra). Subsequently, the Government issued two Government Orders viz., G.O.(D) No. 121 Environment and Forests (FR-2) Department dated 24.03.2014 and G.O.(D) NO. 127 Environment and Forests (FR-2) Department dated 03.04.2014, thereby implementing the order passed by this Court in W.P. No. 12054 of 2011 (*Pachiappan's* case) however, subject to any appeal or any review to be filed.

9. Mr. P. Sanjay Gandhi, learned Additional Government Pleader would submit that in similar matters in M.P. Nos. 1, 2 & 2 of 2014 in W.A. Nos. 714, 715 & 716 of 2014, a Division Bench of this Court has granted interim stay of the similar orders passed by the learned Single Judges of this Court.

10. In my considered opinion, since, the orders passed by the learned Single Judges of this case in the cases cited supra, relied on by the learned counsel for the petitioners were all confirmed by the Division Benches and they have also been implemented by the Government, I cannot differentiate the petitioners and discriminate them. As I have already pointed out, the order made in *K. Sampath's* case has been complied with, who is also a part time Panchayat Assistant originally. In view of the same, I am inclined to grant the relief as prayed for.

11. In the result, both the writ petitions are allowed with a direction to the respondents to count 50% of the service rendered by the petitioners as Part Time Panchayat Assistants before their regularization as full time panchayat assistants together with the service rendered by them as full time panchayat Assistants for the purpose of deciding as to whether the petitioners are entitled for pension or not. If it is found that the petitioners have completed 10 years of service as required under Pension Rules, by calculating the same in the manner indicated above, the respondents shall sanction pension to the petitioners. At any rate, a consequential order shall be passed by the respondents within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.