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**(2013) 10 MAD CK 0060**

**In the Madras High Court**

**Case No :** Writ Petition No. 14019 of 2010 and M.P. No. 1 of 2010

S. Vijayal

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

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**Date of Decision :** 11-10-2013

**Acts Referred:**

**Citation :** (2013) 10 MAD CK 0060

**Hon'ble Judges :** D. Hariparanthaman, J

**Bench :** Single Bench

**Advocate :** P. Ganesan for M/s. C.S. Associates, for the Appellant; M.E. Rani Selvam, AGP, for the Respondent

**Final Decision :** Disposed Off

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## **Judgement**

D. Hariparanthaman, J.—The petitioner worked as Village Karnam in Nagapattinam District from September 1980 till the said post was abolished by the Tamil Nadu Government on 14.11.1980. She was again appointed on 20.11.1996. She was put on probation for a period of two years. She should have passed the Departmental Test within a period of two years after commencement of probation. But the departmental test was not conducted within the aforesaid period of two years. It was conducted only on 23.1.2004. She appeared for the test and she was successful. Thereafter, no order was passed by the first respondent declaring her probation. She retired from service on 31.10.2009. In the circumstances, the petitioner is not disbursed the terminal benefits including gratuity. Hence, she has filed this Writ Petition seeking for a direction to the respondents to disburse the terminal benefits including gratuity for her service from 20.11.1996 to 31.10.2009.

2. The respondents filed counter affidavit. In the counter affidavit, it is stated that by virtue of G.O.Ms. No. 1228, Revenue Department, dated

19.10.2004, the petitioner's service was regularised from the date of her appointment on 20.11.1996. It is also submitted that the departmental

test was not conducted within the two years of her probation period, due to administrative reasons and the same was conducted only on

23.1.2004. The petitioner participated in the test and she was successful in the Departmental Test.

3. In the circumstances, I am of the view that the first respondent should declare the probation of the petitioner on completion of two years of

service from the date of her appointment, since it was not her mistake for not passing the Departmental Test within a period of two years. She

passed the Departmental Test only on 23.1.2004 when the same was conducted. Further, it is admitted that no order was passed extending the

period of her probation.

4. In similar circumstances, this Court in Writ Petition No. 17593 of 2010 by an order dated 12.8.2010, held that the petitioner therein is deemed

to have satisfactorily completed probation, since no order extending the probation is passed within six months from the date of expiry of two years.

5. Paragraph 8 of the aforesaid judgment is relevant and it is extracted hereunder:

8. Under Rule 27(b) of the General Rules for Tamil Nadu State and Subordinate Services, a person, who is placed on probation, if no order

extending the probation is passed within six months from the date of expiry of two years. In this case, admittedly, no orders either terminating the

probation or extending the period of probation were passed at any point of time before the petitioner reached the age of superannuation.

Therefore, it is not now open to the respondents to put the failure of the petitioner to pass the departmental test against him. As a matter of fact, on

the date on which the petitioner reached the age of superannuation, the competent authority has passed orders allowing the petitioner to retire.

Therefore, even if by any stroke of imagination the petitioner is taken to have continued only on probation, such probation cannot hereafter be

terminated in the light of the fact that he has been permitted to retire.

Hence, the first respondent is directed to pass appropriate order, if necessary by

relaxing the necessary Rules, declaring that the petitioner has satisfactorily completed the probation on completion of two years of service from the date of appointment. The first respondent is directed to undertake the aforesaid exercise, within a period of eight weeks from the date of receipt of a copy of this order. A further direction is issued to the first respondent to settle the terminal benefits to the petitioner by sending pension proposals to the concerned authority, within a period of four weeks thereafter. The Writ Petition is disposed of in the above terms. No costs. The connected Miscellaneous Petition is closed.