

W.A.No.3784 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 06.01.2025

CORAM

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

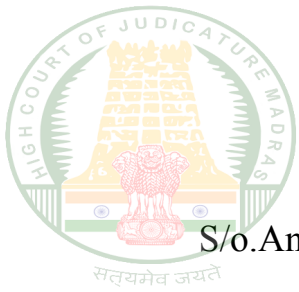
**W.A.No.3784 of 2024
and
C.M.P.No.29717 of 2024**

1. The Government of Tamil Nadu,
Represented by its Principal Secretary to Government,
Rural Development and Panchayat Raj Department,
Fort St.George,
Chennai - 600 009.
2. The Principal Secretary to Government of Tamil Nadu,
Finance Department,
Fort St.George,
Chennai - 600 009.
3. The Commissioner of Rural Development and
Panchayat Raj,
Panagal Building,
Saidapet,
Chennai - 600 015.
4. The District Collector,
Rural Development Section,
Vellore,
Vellore District - 632 009.

... Appellants

-Vs-

1. A.Duraisamy



W.A.No.3784 of 2024

S/o.Anumuthu Gounder

2. M.V.Thiruppathi

S/o.Venkata Gounder

3. The Principal Accountant General (A&E),
Tamil Nadu,
No.361, Anna Salai,
Chennai - 600 018.

... Respondents

PRAYER : Appeal filed under Clause 15 of Letters Patent, to set aside the order in W.P.No.17571 of 2020 dated 13.10.2023 and allow the above writ appeal.

For Appellants : Mr.Ramanlal
Additional Advocate General
Assisted by Mr.T.Arun Kumar
Additional Government Pleader

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 13.10.2023 in W.P.No.17571 of 2020.

2. The issue that has been dealt with in the said writ petition is in nutshell discussed as follows:

(a) The respondents 1 and 2 herein / writ petitioners were appointed as employees of the Village Panchayat concerned sometime in the year 1970 and 1991 respectively. In this regard, the first respondent, namely, Duraisamy was



W.A.No.3784 of 2024

appointed as a Part-time employee and the second respondent, namely,

Thiruppathi was appointed as a Full-time employee.

(b) Having worked for some years, the respondents 1 and 2 / writ petitioners have been regularised by appointing them as Junior Assistants. The first respondent was regularised as such on 01.11.1985 as Junior Assistant and the second respondent was regularised on 01.06.2001 as Junior Assistant.

(c) Though this writ petition was filed by the respondents 1 and 2 who stood as petitioners in the writ petition, insofar as the second petitioner namely, Thiruppathi is concerned, since he is entitled to, according to Mr Ramanlal, learned Additional Advocate General appearing for the appellants, to get the benefits, for which, he approached the writ Court, such benefit had been given as he was the Full-time employee of the erstwhile Panchayat, therefore, now the present appeal has been directed only against the first respondent who stood as the first writ petitioner, namely, Duraisamy, therefore, the facts relates to the said writ petitioner, i.e., Duraisamy alone is traversed herein.

(d) The said Duraisamy was appointed in the year 1970 as a Part-time employee of the Panchayat and in that capacity, he had been continuously



W.A.No.3784 of 2024

working till 1985. Only on 01.11.1985, he has been regularised by brought him under the regular post of Junior Assistant. Since then, he had been working in that capacity and on attaining the superannuation in the year 2003, he retired from service.

(e) It is to be noted that, from 01.04.2003, a New Pension Scheme had been brought in, therefore, those who had been regularised and brought in under the regular time scale of pay for the regular job prior to 01.04.2003 were entitled to get the regular pensionary benefits, i.e., old pension and those who had been brought in under such service after 01.04.2003 may not be entitled to get such benefits.

(f) Only in that proposition, even though the first writ petitioner, i.e., Duraisamy was retired in the year 2003 from the regular job of Junior Assistant, he had been given pension only by calculating his service from 1985 till his superannuation, which means the service rendered by him as a Part-time employee of the Village Panchayat between 1970 and 1985 was not considered for the purpose of calculating his total pensionary benefits.

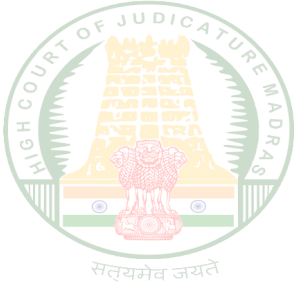
(g) When that being so, considering the plight of these kind of both the Full-time as well as Part-time erstwhile employees of the Village Panchayat, the



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Government had come forward to issue a Government Order in G.O.(Ms)No.39, Rural Development and Panchayat (E5) Department dated 13.06.2011, wherein it was stated that, those who had worked as employees of the Village Panchayat either in Grade-I or Grade-II either on Full-time basis or Part-time basis and had been brought under the regular service by way of Junior Assistant before 01.04.2003, 50% of the service rendered by such Village employee can be taken into account for the purpose of pensionary benefits on his or her superannuation. This is the import of G.O.(Ms)No.39. To have a better understanding, the relevant portion of G.O.(Ms).No.39 is extracted hereunder:

"3. மேற்காணும் ஊரக வளர்ச்சி மற்றும் ஊராட்சி இயக்குநரின் பரிந்துரையினை அரசு கவனமாக பரிசீலனை செய்தது. ஊரக வளர்ச்சி மற்றும் ஊராட்சி இயக்குநரின் பரிந்துரையினை பரிசீலனைக்குப் பின் ஏற்று ஊராட்சி உதவியாளர் பணியிடத்தில் நிலை-1, நிலை-2 என இரு நிலைகளில் எந்த நிலையில் பணிபுரிந்திருந்தாலும், மேலும், முழுநேர ஊராட்சி எழுத்தராகவோ அல்லது பகுதிநேர ஊராட்சி எழுத்தராகவோ பணிபுரிந்திருந்தாலும் அவர்கள் 01.04.2003க்கு முன்னர் இளநிலை உதவியாளர் நிலையில் அரசுப் பணியில் ஈர்க்கப்பட்டிருப்பின் அவர்களது மேற்காணும் தொகுப்பூதிய பணிக்காலத்தில் 50 விழுக்காடு பணிக்காலத்தினை அரசுப் பணிக்காலத்துடன் சேர்த்து ஓய்வூதிய பயன்களுக்கு எடுத்துக் கொள்ள



W.A.No.3784 of 2024

அனுமதித்து அரசு ஆணையிடுகிறது."

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(h) The English translation of the portion of the G.O.(Ms)No.39 dated 13.06.2011 reads thus:

"3. The Government has given the order for who is working the Panchayat Assistant as Stage-1 or Stage-2 whether they worked as Part-time or Full-time writers in the Panchayat, if they appointed before 01.04.2003 as Junior assistant in the Government employee's 50% of their previous period of consolidated pay will be taken in to the pensioner benefits."

(i) Therefore, by virtue of G.O.(Ms)No.39 dated 13.06.2011, the Part-time Village employee also if had been brought as Junior Assistant on regular basis before 01.04.2003 would be entitled for inclusion of 50% service he has rendered as Village employee even on Part-time for the purpose of pensionary benefits.

(j) Since the first petitioner was working as a Part-time Village employee between 1970 and 1985 and he had been brought under regular service of Junior Assistant from the year 1985, the period between 1970 and 1985 can also be taken into account for 50% service for calculating the pensionary benefits. This



W.A.No.3784 of 2024

is purely on the basis of G.O.(Ms)No.39. Therefore, as on 13.06.2011, the first

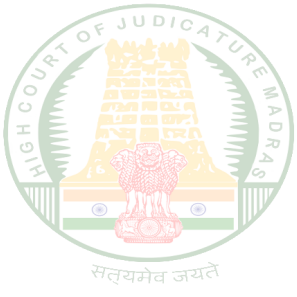
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respondent / first petitioner become eligible and entitled and such a right accrued on him to calculate 50% of his past service rendered as a Village Panchayat employee be calculated as additional service for the purpose of pensionary benefits.

(k) However, that benefit has not been extended to the first respondent / first petitioner for several years, by citing the reasons that subsequently in the year 2013, the Government has come forward to issue G.O.(Ms)No.77, Rural Development and Panchayat (PA 4) Department dated 12.07.2013, whereby, some amendment has been given to G.O.(Ms)No.39, the relevant portion of the amendment made through G.O.(Ms)No.77 dated 12.07.2013 reads thus:

"4. மாநில தலைமைக் கணக்காயரின் கருத்துரு தொடர்பாக, அரசளவில் ஆய்வு செய்யப்பட்டு, அரசாணை (நிலை) எண்.39, ஊரக வளர்ச்சி மற்றும் ஊராட்சித் (இ5) துறை, நாள் 13.06.2011-ஐ திருத்தம் செய்து கீழ்க்கண்டவாறு புதிய அரசாணை வெளியிடப்படுகிறது.

அ) ஊராட்சி உதவியாளர் பணியிடத்தில் நிலை-1, நிலை-2 என இரு நிலைகளில் எந்த நிலையின் கீழும் முழுநேரம் பணி புரிந்திருந்தாலும், மேலும் முழுநேர ஊராட்சி எழுத்தராகப் பணிபுரிந்து இருந்தாலும், அவர்கள் பணிமுறிவின்றி 01.04.2003க்கு



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W.A.No.3784 of 2024

முன்னர் இளநிலை உதவியாளர் நிலையில் அரசுப் பணியில் ஈர்க்கப்பட்டிருப்பின் அவர்கள் 01.01.1961 க்குப் பின் பணிபுரிந்த தொகுப்பூதியப் பணிக்காலத்தில் 50 விழுக்காடு பணிக்காலத்தினை அரசுப் பணிக்காலத்துடன் சேர்த்து ஓய்வூதியப் பயன்களுக்கு எடுத்துக் கொள்ள அனுமதிக்கப்படுகிறது.

ஆ) அரசாணை (நிலை) எண்.39, ஊரக வளர்ச்சி மற்றும் ஊராட்சித் துறை, நாள் 13.06.2011-ல் வெளியிடப்பட்ட ஆணையின்படி ஊராட்சி உதவியாளர் நிலை-1, நிலை-2 மற்றும் ஊராட்சி எழுத்தர் பதவிகளில் பகுதி நேரம் பணிபுரிந்த காலத்தினை ஓய்வூதியப் பயன்கள் பெற கணக்கில் எடுத்துக் கொள்ள இயலாது.

இ) இவ்வரசாணை வெளியிடப்படும் நாள் வரை ஏற்கனவே வெளியிடப்பட்ட அரசாணை (நிலை) எண்.39, ஊரக வளர்ச்சி மற்றும் ஊராட்சித்துறை, நாள் 13.06.2011-ல் கீழ் பயனடைந்தோருக்கு பாதிப்பு ஏதுமின்றி ஆணை வெளியிடப்படுகிறது."

(1) The English translation of the portion of the G.O.(Ms)No.77 dated 12.07.2013 reads thus:

"4. In connection with the opinion of the State Accountant General, examined the same in government level, amended the G.O.Ms.No.39, Urban agglomeration and Panchayat



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W.A.No.3784 of 2024

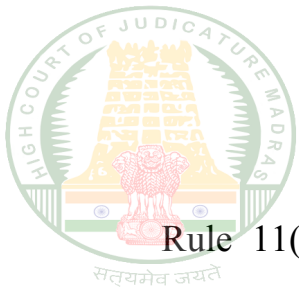
(E5) Dept. dated: 13.06.2011 and orders have been issued.

a) Who have worked as Panchayat Assistant grade I or II either part time or full time, also worked as full time Panchayat Assistant, without any gap, before 01.04.2003 absorbed in the Junior Assistant post, in government service, should include the service period with the consolidated period and 50% of service period with the government service and should take into pensionary benefits.

b) As per the order passed in G.O.Ms.No.39, Rural Development and Panchayat dept., dated 13.06.2011, should not include the period worked as Panchayat assistant Grade-I and II and the period of service worked as part time in the panchayat clerk post with the pensionary benefits account.

c) This order is issued without prejudice to order published in G.O.Ms.No.39, Rural development and Panchayat dept. dt. 13.06.2011 beneficiaries."

(m) It is also to be noted that, an amendment has been made to the Tamil Nadu Pension Rules 1978, i.e., Rule 11(4) by way of G.O.No.41, Finance (Pension) Department dated 09.02.2010. Therefore, it is the contention of the learned Additional Advocate General appearing for the appellants that, as per



W.A.No.3784 of 2024

Rule 11(4) of the Tamil Nadu Pension Rules 1978, those who have been

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working as Part-time employees would not be entitled to get such benefit for calculating their past services even for 50% of ceiling. It is also the further contention of the learned Additional Advocate General appearing for the appellants that, in view of G.O.(Ms)No.77 which has given an amendment to G.O.(Ms)No.39, whereby the benefit which has already been extended through G.O.(Ms)No.39 even for Part-time employees since have been taken away and the benefits now only would be available for Full-time employees for taking their past services as Village Panchayat employees, the first respondent herein who was the Part-time Village employee admittedly between 1970 and 1985 is not entitled to calculate 50% of the past service for the pensionary benefits as that would run contra to both Rule 11(4) of Tamil Nadu Pension Rules, 1978 as well as paragraph No.2 of G.O.(Ms)No.77. This was the prime contention that was projected before the learned Judge in the writ Court, where the writ petition filed by the respondents jointly for getting benefits by way of seeking a mandamus to implement G.O.(Ms)No.39 in their favour, which was in fact allowed by the learned Judge through the impugned order dated 13.10.2023.

3. Assailing the order, the learned Additional Advocate General appearing for the appellants would further contend that, among the two writ

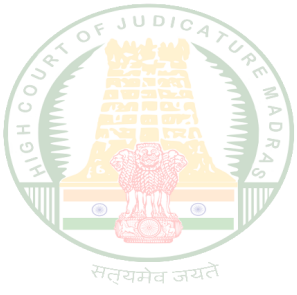


W.A.No.3784 of 2024

petitioners, since the second writ petitioner, i.e., Thiruppathi was a Full-time employee is covered under both G.O.(Ms)No.39 as well as G.O.(Ms)No.77, therefore, such benefit had already been conferred on him, hence in respect of his case, there is no contest in this appeal even though he has been made as a party.

4. The learned Additional Advocate General would further contend that, this writ appeal is confined only to the first respondent, who was the first writ petitioner, namely, Duraisamy who was admittedly the Part-time employee of the Village Panchayat concerned between 1970 and 1985.

5. Even though under G.O.(Ms)No.39, such Part-time employee also would be entitled to calculate 50% of the past service, by virtue of G.O.(Ms)No.77, since a clear amendment has been made to G.O.(Ms)No.39, such a Part-time employee is not entitled to get such a benefit. Based on G.O.(Ms)No.77, the benefit accrued on G.O.(Ms)No.39 cannot be extended to the Part-time employees like the first respondent / first petitioner. Therefore, the approach of the learned Judge and the reasoning as well as the conclusion given by the writ Court through the impugned order is completely erroneous, he has contended.



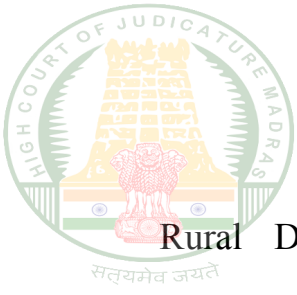
W.A.No.3784 of 2024

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6. We have considered the said submissions made by the learned Additional Advocate General appearing for the appellants and we have given our anxious consideration to the point that has been projected before us.

7. The import of G.O.(Ms)No.39 has already been extracted herein above, where irrespective of the stage whether Stage-I or Stage-II of the Village employee would be entitled to get the benefit of 50% past service which was rendered in the Village Panchayat. It is also the import of G.O.(Ms)No.39 that, whether the first respondent / first petitioner was a Part-time employee or Full-time employee, it is immaterial that, such a benefit can be accrued on him to calculate 50% of the past service rendered in the Village Panchayat.

8. However, this benefit conferred under G.O.(Ms)No.39 dated 13.06.2011 has been amended by taking away the right on 12.07.2013 by issuance of G.O.(Ms)No.77, the import of the said Government Order also we have extracted herein above, where the Part-time employees have not been given the benefits, only the Full-time employees have been given the benefits. But the Clause (c) of paragraph No.4 of G.O.(Ms)No.77 made it very clear that, this order is issued without prejudice to the order published in G.O.(Ms)No.39



W.A.No.3784 of 2024

Rural Development and Panchayat (E5) Department dated 13.06.2011

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beneficiaries. The Tamil version also has been extracted herein above wherein it has been made very clear that, for those who have been benefited under G.O.(Ms)No.39, the issuance of G.O.(Ms)No.77 by making this amendment would not affect their right.

9. In this context, even though it was argued by the learned Additional Advocate General that, such a benefit has not been conferred on the first respondent / first petitioner even though he retired in the year 2003, till the issuance of G.O.(Ms)No.77 in the year 2013, he approached the writ Court only in the year 2020 on the date when the writ petition was filed and it was considered by the writ Court since G.O.(Ms)No.77 already has come into place, the import of the G.O.(Ms)No.77 alone will prevail, therefore, the said writ petitioner / first respondent would not be entitled to get such benefit, hence allowing of the writ petition by the learned Judge is erroneous, he contended.

10. We are not impressed with the said submissions made by the learned Additional Advocate General appearing for the appellants for the simple reason that, the pensionary benefits is continuing cause of action. Secondly, the first respondent / first petitioner was retired from service in the year 2003. Even



W.A.No.3784 of 2024

though he retired in the year 2003, he and similarly placed persons had not been

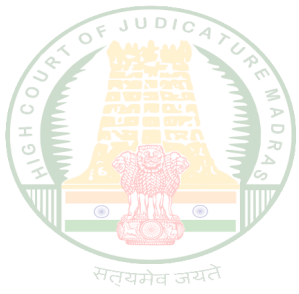
given the benefit of calculating 50% of the past services they have rendered as

Part-time employees of the Village Panchayat concerned.

11. In order to give such benefits to those Part-time employees also to have the benefit of 50% of the past services, such Government Order has been issued by way of policy decision taken by the Government in G.O.(Ms)No.39 dated 13.06.2011 issued under Article 162 of the Constitution.

12. By virtue of G.O.(Ms)No.39 dated 13.06.2011, the benefit of calculating 50% of the past service rendered as a Part-time employee of the Village Panchayat also has been conferred on every employee who are entitled to get the same. Such conferment already been made cannot be taken away merely because of an amendment which has come by way of G.O.(Ms)No.77 dated 12.07.2013.

13. Even this position having been understood by the Government by issuing G.O.(Ms)No.77 in Clause (c) of Paragraph No.4 of the Government Order it had been made very clear that, this order is issued without prejudice to the order published in G.O.(Ms)No.39, Rural Development and Panchayat (E5) Department dated 13.06.2011 beneficiaries.

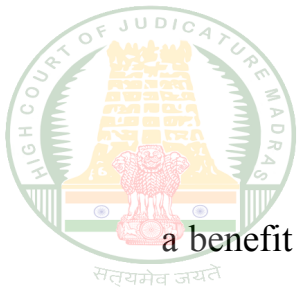


W.A.No.3784 of 2024

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14. Who are all the beneficiaries under G.O.(Ms)No.39 those who rendered Part-time service as well as Full-time service of the Village Panchayat and has been brought as Junior Assistant before 01.04.2003 on regular basis if they retired, thereafter on their superannuation, their past service rendered in the Village Panchayat, 50% of which can be taken into consideration for calculating total pensionary service. This is the benefit that has been conferred under G.O.(Ms)No.39, therefore, those who are entitled to get those benefits can be construed as a beneficiaries within the meaning of G.O.(Ms)No.39, therefore, those right which have already been accrued to the beneficiaries of G.O.(Ms)No.39 cannot be taken away by G.O.(Ms)No.77 and in fact it has not been taken away by virtue of clause (c) of Paragraph No.4 of G.O.(Ms)No.77, therefore, merely because G.O.(Ms)No.77 has come into force on 12.07.2013, such a benefit since cannot be taken away and in fact has not been taken away, that denial of such benefit to the first respondent / writ petitioner is unlawful.

15. Moreover, G.O.(Ms)No.39 cannot be construed that it goes against Rule 11(4) of the Tamil Nadu Pension Rules, because Rule 11(4) has already come into effect in the year 2010 itself, therefore, having knowledge over Rule 11(4) of the Pension Rules 1978, consciously the Government has taken a policy decision and issued G.O.(Ms)No.39 on 13.06.2011 in order to give such



W.A.No.3784 of 2024

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a benefit to those who worked as even Part-time employees of the Panchayat as an erstwhile employees before they brought in as a regular employee of Junior Assistant. When this being so, even Rule 11(4) of the Tamil Nadu Pension Rules 1978 cannot be put against those beneficiaries who are benefited under G.O.(Ms)No.39, as it is a peculiar benefit which has been consciously given by the Government by taking a policy decision. That is the reason why by issuing the amendment in G.O.(Ms)No.77, the beneficiaries have not been touched upon and the beneficiaries would not be affected and this is also a policy decision taken under G.O.(Ms)No.77. Therefore, the first respondent / first petitioner was a Part-time employee of the erstwhile Panchayat between 1970 and 1985 and from 1985, he has been regular employee of the Junior Assistant and he retired only in the year 2003 and the date on which G.O.(Ms)No.39 comes to effect he was fully entitled to get the benefit and merely because such a benefit has not been given or delayed to be given till he filed a writ petition in the year 2020 or till G.O.(Ms)No.77 was passed, it cannot be taken against the said beneficiaries as such right already accrued on the beneficiaries cannot be taken away in view of paragraph No. 4(c) of G.O.(Ms)No.77.

16. For all these reasons, the conclusion arrived at by the learned Judge through the impugned order in W.P.No17571 of 2020 dated 13.10.2023 in



W.A.No.3784 of 2024

respect of the first respondent / first petitioner also is to be approved and hence,

the appeal does not have any plausible reasons, therefore, the Writ Appeal fails and it is liable to be dismissed, accordingly it 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.)

06.01.2025

NCC : Yes / No

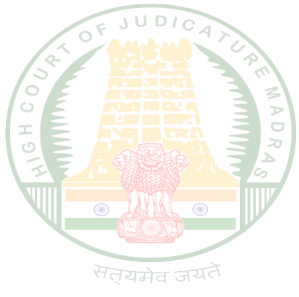
Index : Yes / No

Speaking Order : Yes / No

vji

To

The Principal Accountant General (A&E),
Tamil Nadu,
No.361, Anna Salai,
Chennai - 600 018.



WEB COPY



W.A.No.3784 of 2024

R.SURESH KUMAR, J.
and
C.SARAVANAN, J.

vji

W.A.No.3784 of 2024
and
C.M.P.No.29717 of 2024

06.01.2025