BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.07.2016

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THE HONOURABLE **MR.JUSTICE T.RAJA**

W.P(MD).Nos.6905 to 6908 of 2015
and
W.P(MD)Nos.7446 to 7449 of 2016
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|---|---|---|
| G.PONNAN | ... | PETITIONER in WP(MD) No.6905 of 2015 |
| V.VEMBULU | ... | PETITIONER in WP(MD) No.6906 of 2015 |
| E. ARUMUGAM | ... | PETITIONER in WP(MD) No.6907 of 2015 |
| P.ALAGARSAMY | ... | PETITIONER in WP(MD) No.6908 of 2015 |
| K.PANDI | ... | PETITIONER in WP(MD) No.7446 of 2016 |
| R.RAJANGAM | ... | PETITIONER in WP(MD) No.7447 of 2016 |
| V. GURUSAMY | ... | PETITIONER in WP(MD) No.7448 of 2016 |
| P.THIRUGYANAM | ... | PETITIONER in WP(MD) No.7449 of 2016 |

.. VS..

1 THE STATE OF TAMIL NADU
REPRESENTED BY ITS PRINCIPAL SECRETARY TO GOVERNMENT,
REVENUE DEPARTMENT,
SECRETARIAT, CHENNAI -600 009

2 THE ADDITIONAL CHEIF SECRETARY
AND COMMISSIONER OF REVENUE ADMINISTRATION,
EZHILAGAM, CHEPAUK,
CHENNAI -600 005

3 THE DISTRICT COLLECTOR,
MADURAI DISTRICT,
MADURAI. ... RESPONDENTS in WP(MD) No.6905 to 6908 of 2015

1 THE PRINCIPAL SECRETARY TO
GOVERNMENT REVENUE DEPARTMENT SECRETARIAT
CHENNAI 600 009

2 THE ADDITIONAL CHIEF SECRETARY
AND COMMISSIONER OF REVENUE ADMINISTRATION,
EZHILAGAM, CHEPAUK, CHENNAI-600 005

3 THE DISTRICT COLLECTOR
SIVAGANGAI DISTRICT,
SIVAGANGAI. ... RESPONDENTS in WP(MD) No.7446 TO 7449 of 2016

Prayer in WP(MD) No.6905 of 2015:

Writ Petition is filed Article 226 of the Constitution of India, praying this Court to a Writ of Mandamus, directing the first and third respondents i.e. the Principal Secretary to Government , Revenue Department, Chennai and the District Collector, Madurai to send revised pension proposals to the Accountant General, Chennai calculating half of the services put in by the petitioner as Vettiyan within a specified time frame that may be fixed by this Honourable High Court.

Prayer in WP(MD) No.6906 of 2015:

Writ Petition is filed Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the first and third respondents i.e. the Principal Secretary to Government , Revenue Department, Chennai and the District Collector, Madurai to send revised pension proposals to the Accountant General, Chennai calculating half of the services put in by the petitioner as Thalayari within a specified time frame that may be fixed by this Honourable High Court.

Prayer in WP(MD) No.6907 of 2015:

Writ Petition is filed Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the first and third respondents i.e. the Principal Secretary to Government , Revenue Department, Chennai and the District Collector, Madurai to send revised pension proposals to the Accountant General, Chennai calculating half of the services put in by the petitioner as Thalayari within a specified time frame that may be fixed by this Honourable High Court.

Prayer in WP(MD) No.6908 of 2015:

Writ Petition is filed Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the first and third respondents i.e. the Principal Secretary to Government , Revenue Department, Chennai and the District Collector, Madurai to send revised pension proposals to the Accountant General, Chennai calculating half of the services put in by the petitioner as Thalayari within a specified time frame that may be fixed by this Honourable High Court.

Prayer in WP(MD) No.7446 of 2016:

Writ Petition is filed Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the first respondent i.e. the Principal Secretary to Government, Revenue Department, Chennai to refix the pension of the petitioner counting the services put in by him as Thalayari for the period from 01.01.1986 to 31.05.1995 within a specified time frame that may be fixed by this Honble Court.

Prayer in WP(MD) No.7447 of 2016:

Writ Petition is filed Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the first respondent i.e., the Principal Secretary to Government, Revenue Department, Chennai to refix the pension of the petitioner counting the services put in by him as Thalayari for the period from 01.08.1986 to 31.05.1995 within a specified time frame that may be fixed by this Honourable Court.

Prayer in WP(MD) No.7448 of 2016:

Writ Petition is filed Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the first respondent i.e., the Principal Secretary to Government, Revenue Department, Chennai to refix the pension of the petitioner counting the services put in by him as Thalayari for the period from 11.05.1981 to 31.05.1995 within a specified time frame that may be fixed by this Honourable Court.

Prayer in WP(MD) No.7449 of 2016:

Writ Petition is filed Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the first respondent i.e. the Principal Secretary to Government, Revenue Department, Chennai to refix the pension of the petitioner counting the services put in by him as Thalayari for the period from 01.01.1974 to 31.05.1995 within a specified time frame that may be fixed by this Honble Court.

For petitioner : Mr.S.Visvalingam,
in all the Writ Petitions

For Respondents : Mr.M.Murugan, Government Advocate
in all the Writ Petitions

**COMMON ORDER**

Since the issue raised in all the Writ Petitions is one and the same, they have been taken up together and disposed of by this common order:

2. All the Writ Petitions have been filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus directing the respondents to refix their pension counting half of the services put in by them as Thalaiyaries, within a stipulated time.

3. The learned counsel for the petitioners submitted that all the petitioners were originally appointed as Thalaiyaries and then, they were absorbed as Village Assistants in regular time scale of pay from 01.06.1995 and they have rendered their services continuously without any break as follows:

| s. No | Name | Period of service as Thalayari | Period of service as Village Assistant | Date of Retirement |
|---|---|---|---|---|
| 1 | G.Ponnan WP(MD)No.6905/2015 | 12.09.1972 to 31.05.1995 | 01.06.1995 to 31.08.2012 | 31.08.2012 |
| 2 | V.Vembulu WP(MD)No.6906/2015 | 13.05.1981 to 31.05.1995 | 01.06.1995 to 31.11.2010 | 31.11.2010 |
| 3 | P.Arumugam WP(MD)No.6907/2015 | 14.06.1989 to 31.05.1995 | 01.06.1995 to 31.07.2010 | 31.07.2010 |
| 4 | P.Alagarsamy WP(MD)No.6908/2015 | 10.05.1981 to 31.05.1995 | 01.06.1995 to 31.01.2007 | 31.01.2007 |
| 5 | K.Pandi WP(MD)No.7446/2015 | 01.01.1986 to 31.05.1995 | 01.06.1995 to 30.04.2015 | 30.04.2015 |
| 6 | R.Rajangam WP(MD)No.7447/2015 | 01.08.1986 to 31.05.1995 | 01.06.1995 to 31.07.2013 | 31.07.2013 |
| 7 | V.Gurusamy WP(MD)No.7448/2015 | 11.05.1981 to 31.05.1995 | 01.06.1995 to 31.07.2015 | 31.07.2015 |
| 8 | Thirugnanam WP(MD)No.7449/2015 | 01.11.1974 to 31.05.1995 | 01.06.1995 to 31.07.2012 | 31.07.2012 |

4. Contending further, the learned counsel for the petitioners has submitted that the respondents have taken into account only the service rendered by the petitioners as Village Assistants in regular time of pay from 01.06.1995, for payment of pension. Hence, the petitioners are getting lesser pension for having served in the Revenue Department as Thalaiyaries and Village Assistants. He has further submitted that the respondents had completely overlooked the Rule 11(4) of the Tamil Nadu Pension Rules, 1978. As per Rule 11(4)(iii), half of the service rendered under the State Government in non-provincialised service, consolidated pay, honorarium or daily wages basis on or after 1st January, 1961 in respect of Government employees absorbed in regular service before 1st April 2003, shall be counted for retirement benefits along with regular service.

5. But, in the present case, as stated earlier, the respondents have not taken into account the services rendered by the petitioners as Thalaiyaries.



6. The learned counsel for the petitioners has further submitted that when similarly placed persons approached this Court

in a batch of Writ Petition(MD)Nos.11094 to 11101 of 2008, a common order, dated 06.03.2009, was passed applying Rule 11(4) of the Tamil Nadu Pension Rules, 1978, directing the respondents to calculate the petitioners' service from the petitioners' date of appointment, for the purpose of pensionary benefits. The said order was put to challenge in W.A(MD)Nos.204 to 211 of 2011 by the Accountant General (A&E), Chennai and the District Collector, Virudhunagar, Wherein the Honourable Division Bench of this Court, accepting the view taken by the learned single Judge, has held that Rule 11(4)of the Tamil Nadu Pension Rules, 1978, giving the benefit of counting half of the services rendered under the State Government in non-provincialised service, made it clear that the qualifying service of the Government Servant commences from the date on which he takes charge of the Post, to which he is first appointed either substantively or in an officiating or in temporary capacity.

7. Pursuant thereto, the Government has also accepting the same, issued G.O.Ms.No.173 Revenue (Ser8(1) Department, dated 29.05.2014, directing to pay pension to ten Village Assistants taking into account the service rendered by them as Thalaiyaries, prior to 01.06.1995. Therefore, there cannot be any impediment for the respondents to concede the prayer of the petitioners, since G.O.Ms.No.173, is squarely applicable to the case of the petitioners.

8. The learned Government Advocate reiterating the stand taken in the counter affidavit would submit that all the petitioners were under non-provincialised establishment and they were not on the regular time scaly of pay and therefore, their request for counting the period of service rendered by them in the Village Panchayat, for the payment of pension, has been rejected. Moreover, G.O.Ms.No.408 Finance(Pension) Department, dated 25.08.2009 stating that 50% of the service rendered by the Government Servant as non-provincialised service, consolidated pay, honorarium and daily wages is to be taken into account for payment of pension, has come into effect only from 01.01.1961. Moreover, the same is applicable only to those persons, who were appointed in the permanent post from 01.04.2003 as stated in Rule 11(2) of the Tamil Nadu Pension Rules.

9. Arguing further, the learned Government Advocate would further submit that since the period of services of the petitioners are less than 20 years of required qualifying services, they are not eligible to claim pension as per the Tamil Nadu Pension Rules. Further, Principal Accountant General(A & E), Chennai, who is the pension sanctioning Authority, sought for clarification from the Government as to whether the service rendered in village panchayat may be taken into account for payment of pension. Since the Village Assistants are not eligible to get pension as per Rules, the Principal Accountant General in

some cases rejected their claim. Therefore, there is no infirmity in the impugned order, he pleaded. Concluding his argument, he would submit that as per the Pension Rules prescribed, pension will apply only to those, who had worked on full time service rendering qualifying service of 20 years. If a Village Assistant's qualified service is less than 20 years, but above 10 years, he is eligible for special pension of Rs.150/- per month, otherwise, he is not entitled to.

10. But these arguments do not stand good in the light of G.O.Ms.No.173 Revenue (Ser8(1) Department, dated 29.05.2014 issued only to apply and implement the order passed by the Honourable Division Bench of this Court in W.A(MD)Nos.204 to 211 of 2011, dated 14.02.2011.

11. In this regard, it is relevant to extract paragraph Nos.9 and 10 of the judgment passed in W.A(MD)Nos.204 to 211 of 2011, dated 14.02.2011:

> ***9.It is useful to refer to Rule 11 of the Tamil Nadu Pension Rules, 1978, which deals with commencement of qualifying service for pensionary benefits, which reads as follows:-***
>
> ***"11.Commencement of qualifying service - Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity. In the case of a Government servant retiring on or after the 1st October, 1969, temporary or officiating service in a pensionable post whether rendered in a regular capacity or not, shall count in full as qualifying service even it is not followed by confirmation."***
>
> ***10.A cursory reading of the above rule makes it manifestly clear that the qualifying service of a Government Servant commences from the date on which he take charge of the post, to which he is first appointed either substantively or in an officiating or in temporary capacity.***

***12.*** It is also not in dispute that ignoring the above, if the services rendered by the petitioners in the cadre of Village Assistant in which they are getting regular time scale of pay, alone are taken into account for calculation of payment of pension, as contended by the Respondent, then the petitioners will be getting lesser pension.

13.For better appreciation of the submissions made on the side of the Petitioners, it is necessary to extract below Rule 11 (4) of the Tamil Nadu Pension Rules:



***11(4). Half of the service rendered under the State Government in non-provincialised service, consolidated pay, honorarium or daily wages basis on or after 1st January 1961 in respect of Government employees absorbed in regular service before 1st April 2003 shall be counted for retirement benefits alongwith regular service, subject to the following conditions, namely:-***

***(i)Service rendered in non-provincialised service, consolidated pay, honorarium or daily wages basis shall be in a job involving whole time employment;***

***(ii)Service rendered shall be on consolidated pay, honorarium or daily wages paid on monthly basis and subsequently absorbed in regular service under the State Government;***

***(iii) Service rendered in non-provincialised service, consolidated pay, honorarium or daily wages basis shall be followed by absorption in regular service before 1st April 2003 without a break;***

14. A close reading of Rule 11(4) of the Tamil Nadu Pension Rules, clearly shows that half of the service rendered under the State Government in non-provincialised service, consolidated pay, honorarium or daily wages basis on or after 1st January, 1961, in respect of Government employees absorbed in regular service before 1st April 2003, shall be counted for retirement benefits along with regular service. Therefore, the Honourable Division Bench has rightly confirmed the order passed by the learned single judge dismissing the Writ Appeals submitted by the Accountant General. Subsequently, the Government has also issued G.O.Ms.No.173.

15. When the respondents had also complied with the order passed by this Court, in my considered view, the case of the petitioners, is squarely covered by the observation made by the Honourable Division Bench of this Court in the above mentioned batch of W.A(MD)Nos.204 to 211 of 2011, dated 14.02.2011 and they are also entitled to get the benefit of G.O.Ms.No.173.

16. In the result, all the Writ Petitions are allowed. The respondent are directed to give the benefit of G.O.Ms.No.173 Revenue (Ser8(1) Department, dated 29.05.2014, in favour of the petitioners. Such exercise shall be done, within a period of

eight weeks from the date of receipt of a copy of this order. No Costs.

Sd/-
Assistant Registrar (CS-I)



/True Copy/

Sub Assistant Registrar

pm
To
1.The Principal Secretary, State of Tamil Nadu,
Revenue Department, Secretariat,
Chennai - 600 009.

2.The Additional Chief Secretary and
Commissioner of Revenue Administration,
Ezhilagam, Chepauk, Chennai - 600 005.

3.The District Collector, Madurai District,
Madurai.

4. The District Collector, Sivagangai District,
Sivagangai

+4CC to Mr.S.Visvalingam, Advocate Sr.No.36035
+4CC to Mr.S.Visvalingam, Advocate Sr.No.36036
+1CC to Spl.Government Pleader Sr.No.36354

GJM/CK/26.9.16-8p-14C

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and
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