BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.(MD) Nos.12544 & 12545 of 2017

K.Muthiah .. Petitioner in W.P.(MD) No.12544 of 2017

M.Mathiyalgan .. Petitioner in W.P.(MD) No.12545 of 2017

Versus

1.The Principal Secretary to Government,
Revenue Department,
Secretariat, Chennai - 600 005.

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

3.The District Collector,
Madurai District,Madurai. .. Respondents in both Writ Petitions

Common Prayer : Petitions filed under Article 226 of the Constitution of India for issuance of a Writs of Mandamus, directing the first and third respondent 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 Court.

For Petitioners (in both W.Ps)	:	Mr.Visvalingam
For Respondents (in both W.Ps)	:	Mr.D.Muruganantham Additional Government Pleader

COMMON ORDER

Mr.D.Muruganantham, learned Additional Government Pleader, takes notice for the respondents in both the writ petitions. By consent, the Writ Petitions are taken up for final disposal.

2. The petitioners were appointed as Thalayari, by the order of the Tahsildar, in his proceedings in Na.Ka.No.2180/86/20.2.87, dated 26.02.1987 and 16.09.1989 respectively. Subsequently, their

services were also regularised on 27.02.1987 and 16.09.1989(FN) respectively.

3. The learned counsel for the petitioners would further submit that after their continuance of employment, they were finally permitted to retire from service with effect from 31.03.2017 and 30.06.2015, by the same Thasildar, Vadipatti, in Na.Ka.Nos.346/2017 and A1/5056/2015 respectively.

4. Referring to a copy of the proposal, dated 12.01.2017 for disbursement of their pensionary benefits, it is stated that the respondents themselves have admitted that the petitioner in WP(MD) No.12544/2017 has the qualifying service as on the date of superannuation is 21 years 7 months and 27 days and his last drawn pay is being 5970 + 800 (6770) and the petitioner in WP(MD) No.12545/2017 has the qualifying service as on the date of superannuation is 19 years 10 months and 23 days and his last drawn pay is being 5970 + 800 (6770). With these particulars, the papers were sent to the office of the Accountant General, so as to enable the issuance of necessary authorisation for family pension, DCRG, commuted value of pension, GPF etc. In this background, the petitioners are entitled to calculate the half of the service rendered in the State Government in non provincialised post as Thalayari. However, the same has not been considered by the respondents and hence, the petitioners are before this Court with these writ petitions.

5. In similar circumstances, while entertaining identical issue, I have passed an order in W.P.(MD) No.15473 of 2014, dated 28.06.2016, in the case of ***V.Karuppiah v. The Secretary to Government, Revenue Department, and two others.*** It is pertinent to extract the relevant portion of the order:

> *"4. Placing reliance on Rule 11 (4) of the Tamil Nadu Pension Rules, 1978m learned counsel for the petitioner contended that when Rule 11 (4) is very clear that half of the service rendered under the State Government in non-provincialised service, consolidated pay, honorarium or daily wages basis on or after 01.01.1961 in respect of Government employees absorbed in regular services before 01.04.2003 shall be counted for retirement benefits along with 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 jon involving whole time employment;*
>
> *(ii) Service rendered in non-provincialised 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, the impugned order passed contrary to Rule 11 (4), he further pleaded that the impugned order is liable to be set aside.

5.Again taking support from the order, dated 04.11.2013, passed in W.P.(MD).No.5059 of 2009 (S.Subbiah Maniyakar v. The Director of Pension, Chennai and three others), he would submit that in similar circumstances, when similar objection was taken by the respondents therein, this Court by applying Rule 11 (4) of the Tamil Nadu Pension Rules, 1978 has held that while calculation the period of service for the purpose of pension, half of the service rendered while the Government servant was paid out of contingencies shall be allowed. On this basis, he pleaded the relier as prayed for, may be issued to the respondents, to pay pension to the petitioner as per the Tamil Nadu Pension Rules, 1976, by taking into account the half of the service rendered by the petitioner prior to 01.06.1995 as miras Talayaari.

6. In yet another batch of cases in W.P.(MD) Nos.6905 to 6908 of 2015, in the case of ***G.Ponnan and seven others v. The State of Tamil Nadu and two others,*** referring to Rule 11(4)(3) of the Tamil Nadu Pension Rules, 1978, it has been held that half of the service rendered in 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 first April 2003 shall be counted for retirement benefits along with regular service. The writ petitions were allowed and the relevant portion is as follows:

"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 along with 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 States Government in non-provoncialised 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."

7. A plain reading of the above observation, it covers the case of the petitioners that the petitioners were appointed as Thalayari and they have also put in the post of Village Assistant, and therefore the petitioners' service as Village Assistants till his retirement on 31.03.2017. Therefore, the petitioners are entitled for benefit of pension under Rule 11(4) of the Tamil Nadu Pension Rules 1978.

8. Accordingly, these writ petitions stand allowed and the District Collector, Madurai is directed to revise the pension proposal and forward the same again to the Secretary to Revenue Department, Chennai, to do the needful within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(crl side)

/True Copy/

Sub Assistant Registrar

To

1.The Principal Secretary to Government,
Revenue Department,
Secretariat, Chennai - 600 005.

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

3.The District Collector,
Madurai District,
Madurai.

+2cc to M/S.S.VISVALINGAM, Advocate SR.Nos.63613&63614
+1cc to Special Government Pleader, SR.No. 64426

ia/rr
MAS/MR-KKR/SAR2:18.09.2017:5P-7C

W.P.(MD) No.12544 and 12545 of 2017
06.07.2017