BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **16.08.2017**

CORAM :

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

W.P.(MD)No.14679 of 2017

C.Ayyanan ... Petitioner

vs.

1. The Principal Secretary to Government,
   Revenue Department,
   Secretariat,
   Chennai - 600 009.

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

3. The District Collector,
   Madurai District,
   Madurai. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records of the third respondent i.e., the District Collector, Madurai in his proceedings in ந.க.எண்.ஜி1./34426/17 நாள்:31.07.2017 and quash the same and consequently direct the first respondent i.e., the Principal Secretary to Government, Revenue Department, Chennai to count half of the services put in by the petitioner in the cadre of Thalayari for the period from 27.06.1979 to 31.05.1995 for the purpose of calculation of pension and to submit proposals to the Accountant General, Chennai for re-fixation of his pension, in the light of the orders passed in G.O.No.173 Revenue (Ser8(1) Department dated 29.05.2014 and the recent orders in W.A.(MD)No.865 of 2017 dated 13.07.2017 filed by the State against the orders in W.P.(MD)No.13032 of 2015, dated 14.07.2016 within a specified time frame that may be fixed by this Court.

For Petitioner : Mr.S.Visvalingam

For Respondents : Mr.D.Muruganandham
Additional Government pleader

O R D E R

The writ petition has been filed for a writ of Certiorarified Mandamus to call for the records of the third respondent in ந.க.எண். ஜி1./34426/17 நாள்:31.07.2017 and quash the same and consequently direct the first respondent, the Principal Secretary to Government, Revenue Department, Chennai, to count half of the services put in by the petitioner in the cadre of Thalayari for the period from 27.06.1979 to 31.05.1995 for the purpose of calculation of pension and to submit proposals to the Accountant General, Chennai for re-fixation of his pension, in the light of the orders passed in G.O.No.173 Revenue (Ser8(1) Department, dated 29.05.2014 and the recent orders in W.A.(MD)No.865 of 2017, dated 13.07.2017 filed by the State against the orders in W.P.(MD) No.13032 of 2015, dated 14.07.2016, within a specified time.

2. Assailing the impugned order refusing to count the service of the petitioner in the post of part time Village Thalayari, the learned counsel appearing for the petitioner would submit that the petitioner was initially appointed on permanent basis as a Thalayari in Puthusukkampatti Village as per the proceedings No.82579/A2, dated 27.06.1979 of the Tahsildar, Melur. He continued as Thalayari on consolidated pay till he was absorbed in the regular time scale of pay as Village Assistant with effect from 01.06.1995. While serving as Village Assistant, he was promoted as Office Assistant by another proceedings No.A6/12884/2013, dated 26.06.2015. Accordingly, the petitioner also joined duty as Office Assistant on 27.06.2015 in the Taluk Office, Melur. Finally, without any break, he retired from service on reaching the age of superannuation, on 30.06.2015. In this back ground, he has put in total service of 36 years in the Revenue Department. But the pension was granted to him counting the services only from the cadre of Village Assistant i.e., from 01.06.1995 to 30.06.2015. Unfortunately, his prior service as Thalayari served on consolidated pay from 27.06.1979 to 31.05.1995 viz., 16 years of service was not taken into account for the purpose of calculation of pension. Such an action is running contrary to Rule 11(4) of the Tamil Nadu Pension Rules, 1978. Continuing his argument it is pleaded that a reading of Rule 11(4) of the Tamil Nadu Pension Rules, 1978 clearly shows that the service rendered under the State Government in non-provincialised service, consolidated pay, honorarium or daily wages basis on or after Ist 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, subject to the following condition:

(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;

3. In the instant case, the petitioner has never served as honorary Thalayari, but he was serving as part time Thalayari on permanent basis, as per the proceedings No.82579/A2, dated 27.06.1979 of the Tahsildar, Melur. Moreover, he was also absorbed in the regular time scale of pay as Village Assistant with effect from 01.06.1995 without giving any break in service, that shows that the petitioner was permanently serving as Thalayari from the date of his appointment i.e., on 27.06.1979. Therefore, the impugned order refusing to count 16 years of service for the purpose of calculation of his pension is liable to be set aside. Adding further, it is stated that this Court, while considering the similar issue, referring to Rule 11(4) of the Tamil Nadu Pension Rule, has allowed the similar prayer in an order dated 14.07.2016 passed in W.P.(MD).No.13032 of 2015.

4. Per contra, the learned Additional Government Pleader appearing for the respondents would submit that the Government till date has issued only one G.O.Ms.No.408, dated 25.08.2009, granting the benefit of counting full time service of Thalayari. Since the petitioner was appointed as a part time Thalayari, on 27.06.1979, by the Tahsildar, Melur, the said G.O.Ms.No.408, giving the benefit of counting the past services of full time services in the post of Thalayari cannot be made applicable to the petitioner's case as he was admittedly appointed as a part time Thalayari.

5. No doubt the said G.O.Ms.No.408 speaks of only counting of services rendered by the full time Government servant. But a perusal of Rule 11(4) of the Tamil Nadu Pension Rules, which clearly shows that ½ of the services rendered under the State Government in non-provincialised service, consolidated pay, honorarium or daily wages basis on or after Ist January 1961 in respect of Government employees absorbed in regular service before Ist April 2003, shall be counted for retirement benefits along with regular service subject to the conditions mentioned as above.

6. In the present case, admittedly the petitioner was appointed as Thalayari, on 27.06.1979, by the Tahsildar, Melur,

in his proceeding No.82579/A2 A1, at Putusukkampatti Village. He was also absorbed in the regular time scale of pay as a Village Assistant with effect from 01.06.1995, which is much prior to Ist April 2003. Secondly, the petitioner was serving continuously on permanent basis from the date of his original appointment viz., 27.06.1997 as Thalayari. The case of the petitioner is clearly covered by Rule 11(4). Moreover, an order passed by me in similar case enclosed in the typed set of papers also clearly shows that the issue is no longer *res integra.* While considering the similar issue, I have followed an order passed by this Court in W.A.(MD). No.363 of 2010 (The Tahsildar vs. Esakki and others), following the judgment of the Supreme Court in the case of *A.P.Srivastava v. Union of India and others* reported in 1996 (1) LLJ 241 and also the order of this Court in Chinna Alagi, O.A., vs. State of Tamil Nadu reported in 2006 (5) CTC 320. Moreover, the order passed by me was also affirmed by the Honourable Division Bench in W.A.(MD). No.865 of 2017, dated 13.07.2017. The relevant portion is given as under:

> "*3. According to the petitioner, he was serving as Office Assistant in Taluk Office, Melur and he reached the age of superannuation on 30 September 2014. But, when sending his pension proposals, only the period of service rendered by him in regular time scale of pay i.e., from 01 June 1995 to 30 September 2014 alone was taken into account for sanction of pension. The continuous service of 16 years on consolidated pay put in by him as permanent Thalayari was not at all considered for the purpose of calculating pension. Seeking revision of his pension, he filed the said W.P.(MD).No.13032 of 2015. The learned single Judge noted that the issue was no longer res-integra. Following the earlier Division Bench decision of this Court in W.A.(MD).No.303 of 2010, said W.P.(MD). No.13032 of 2015 was disposed of by directing the appellants herein to sanction and pay pension to the writ petitioner by taking into account the service rendered by him prior to 01 June 1995 in the post of Village Assistant / Thalayari.*
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> *4.Before us, the learned Additional Government Pleader appearing for the appellants contended that the writ petitioner was working only as part -time Thalayari and that he was not on regular time scale of pay and that therefore, the question of reckoning 50% of his service as Thalayari for providing pension would not arise. On the other hand, the learned counsel appearing for the respondent / writ petitioner filed a compilation of the earlier orders passed by this Court.*
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> *5. We carefully went through the order dated 16 February 2009 dismissing W.A.(MD).No.16 of 2009. The*

present case is absolutely similar. The learned Additional Government Pleader could not dispute that the case on hand is squarely covered by the earlier decisions of this Court. We find no merit in this appeal."

7. In view of the above, the writ petition stands allowed and the third respondent is directed to send a proposal to the first respondent within a period of two weeks from the date of receipt of a copy of this order and on receipt of the said proposal through the third respondent, the first respondent shall count the services rendered by the petitioner in the post of Thalayari from 27.06.1979 till 01.06.1995 for the purpose of calculating the pensionary benefits and the said exercise shall be completed as expeditiously as possible, preferably within a period of six weeks thereafter. No costs.

Sd/-
Assistant Registrar(Records)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Secretary to Government,
   Revenue Department,
   Secretariat,Chennai - 600 009.

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

3. The District Collector,
   Madurai District,Madurai.

+ 1 cc TO Mr.S.Visvalingam , Advocate in SR No. 72730
+1cc to The Special Government Pleader in SR.No.72945

akv
AE/KP/SAR2/24.10.2017/5P/6C

W.P(MD)No.14679 of 2017
16.08.2017