IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 30.11.2018
CORAM:
THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.2688 of 2018
and
CMP Nos.21904 and 21907 of 2018

1.The Government of Tamil Nadu
Rep. by its Secretary to Government
Animal Husbandry, Dairying and Fisheries Department
Fort St. George, Chennai - 600 009

2.The Commissioner for Milk Production and
Dairy Development
Madhavaram Milk Colony
Chennai - 600 052 ... Appellants/ Respondents

Vs.

1.R.Haridoss

2.The Accountant General (A&E)
Chennai - 600 018 ... Respondents/ Petitioners

Writ Appeal filed under Clause 15 of the Letters Patent against the Order dated 20.11.2017 made in W.P.No.31539 of 2012.

Prayer in W.P.No.31539 of 2012:
Pleased to issue a Writ of Mandamus or any other Writ or Direction of like nature, directing the respondents to grant minimum pension to the petitioner by treating this period of regular service in the Diary Development Department from 27.4.1971 to 31.1.1981 (9 years 9 months and 3 days) together with service rendered in contingency establishment from 30.12.1970 to 26.4.1971 along with arrears and interest on delayed payment of pension and all other consequential benefits and pass such further or other orders as this Hon'ble Court.

For Appellants : Mr.R.Udhayakumar,
Addl. Govt. Pleader

J U D G E M E N T
(Judgment of the Court was delivered by S.MANIKUMAR, J)

Challenge in this appeal is to an order of the writ court dated 20.11.2017 made in W.P.No.31539 of 2012, by which the writ court, directed the appellants herein, to grant pension to the first respondent/writ petitioner by treating the period of qualifying services as 10 years under the provisions of the Tamil Nadu Pension Rules, 1978 and accordingly, calculate the pensionary benefits and disburse the same with arrears as applicable as per rules, within a period of twelve weeks from the date of receipt of a copy of the writ court order.

2. Short facts leading to the filing of the writ appeal are that, the 1st respondent herein/writ petitioner, retired from the services of the Tamil Nadu Cooperative Milk Producers' Federation(TCMPF), as Special Grade Chargeman on 31.08.2004. He was initially appointed as Mazdoor on contingency service in Dairy Development Department on 30.12.1970 and worked as such till 26.04.1971. His services were regularized in the post of Compressor Man with effect from 27.04.1971 in the said department. Thereafter, the writ petitioner, was deputed to work on Foreign Services terms and conditions with the Tamil Nadu Dairy Development Corporation. Subsequently, he continued on deputation even after the constitution of Tamil Nadu Cooperative Milk Producers' Federation.

3. It is the further case of the writ petitioner that Government of Tamil Nadu issued G.O. Ms. No.1921 Animal Husbandry Development Department dated 08.11.1983, which provides for absorption of Government servants working in the Federation on deputation on obtaining their option for the same. The said Government Order also provides a package of terminal benefits that would be paid to those persons who opted to get absorbed into the Federation.

4. Writ petitioner continued to work in the Federation even though no orders were passed by Dairy Development Department terminating his lien in Government service. Likewise, the Federation also did not issue any order of absorption, absorbing him into the services of the Federation as per the norms prescribed in G.O. Ms. No.1921. He attained superannuation on 31.08.2004 as a Special Grade Chargeman.

5. The said Government Order, namely G.O. Ms. No.1921, was challenged and finally, the Hon'ble Supreme Court by order dated 18.07.1994, held that all those who have retired after 01.02.1983 (later modified as 01.02.1981) shall be deemed to have opted to join the services of the Federation permanently and as such, the petitioner has contended that he is entitled to the terminal benefits, in terms of G.O. Ms. No.1921.

6. Writ petitioner has further stated that insofar as his case is concerned, since no absorption orders have been passed and since the Government also have not terminated his lien from Government service, he shall be deemed to have retired only as a Government servant on 31.08.2004.

However, without prejudice to the said contention, he has contended that at least taking into account the date, his deemed absorption in the Federation, viz. 31.01.1981, he is entitled to payment of minimum pension.

7. Writ petitioner has further stated that he served as Junior Mazdoor from 30.12.1970 to 26.04.1971(118 days). The claim of the writ petitioner is that, half of his services on contingency employment to be reckoned for pension as per Rule 11 of the Tamil Nadu Pension Rules. Further, the petitioner continued as a Compressor Man from 27.04.1971 to 31.01.1981(9 years, 9 months 3 days). However, the appellants herein have erroneously calculated the qualifying services and right of pension has been denied to the writ petitioner.

8. It is the further case of the writ petitioner that he has made several representations for grant of pension as he has put in the minimum qualifying service for the same. However, by a communication dated 14.03.2008, the Commissioner for Milk Production and Dairy Development, Madhavaram Milk Colony, Chennai/1st appellant herein, informed the writ petitioner that the service rendered by him fell short of 28 days for calculating the qualifying service for the purpose of pension and thus the case of the writ petitioner was not recommended to second respondent herein for grant of pension.

9. Writ petitioner has again sent a representation referring to G.O. Ms. No.24 Finance (Pension) Department dated 13.01.1986 stating that a fraction of a year, equal to 3 months and above, shall be treated a completed one half year and reckoned as qualifying service for the purpose of pension.

10. Writ petitioner has further contended that along with other similarly placed persons, he has already filed W.P. No.28537/2011 before this court praying for payment of pension as Government servant upto the date of his retirement on 31.08.2004 and the same is pending. However, without prejudice to his right, he has restricted his claim only for minimum pension as of 31.01.1981, the date on which he deemed to have been absorbed into the services of the federation. As he did not receive any response to his representations, he has filed the instant writ petition for a direction to the appellants herein, to grant minimum pension to him by treating his period of regular service in Dairy Development Department from 27.04.1971 to 31.01.1981 (9 years, 9 months and 3 days) together with service rendered in contingency establishment from 30.12.1970 to 26.04.1971 along with arrears and interest on delayed payment of pension.

11. Upon considering the arguments of both parties and the materials placed, the writ court, vide order dated 20.11.2017, allowed the writ petition and granted the relief sought for by the writ petitioner. Relevant portion of the order reads thus:

> " 3.The learned counsel for the writ petitioner states that the writ petitioner has served as Junior Mazdoor from 30.12.1970 to 26.04.1971 (118 days). In this regard, the claim of the petitioner is that half of the services on contingency employment to be reckoned for pension as per Rule 11 of the Tamil Nadu Pension Rules. Further, the petitioner continued as Compressor Man from 27.04.1971 to 31.01.1981 (9 years, 9 months 3 days). However, the respondents have erroneously calculated the qualifying services and the right of pension has been denied to the writ petitioner. This Court has earlier considered the same issue in the case of S.Renukarani Vs. The Government of Tamil Nadu rep. By its Secretary, Transport(RW1) Department in W.P.Nos.8702 to 8707 of 2016 dated 11.09.2017 and the relevant paragraph 3 is extracted hereunder:
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> > 3. However, the learned counsel for the writ petitioners submitted that the Government issued G.O.Ms.No.24, Finance (Pension) Department dated 13.01.1986, in respect of calculating the length of qualifying service for the purpose of pension benefits. Following the aforesaid Government Order, the Tamil Nadu Pension Rules, 1978 was amended. The amended Rule 43(3) of the Tamil Nadu Pension Rules, reads as follows:
> >
> > "43(3) In calculating the length of qualifying service, fraction of a year equal to [three months] and above shall be treated as completed one half year and reckoned as qualifying service".
>
> 4. It is made clear that the writ petitioner has completed 9 years, 9 months and 3 days. Thus, the writ petitioner is eligible for continuing the period of calculating the services as one full year and accordingly, it has to be construed as if the petitioner had completed 10 years service for the purpose of grant of pension under the Tamil Nadu Pension Rules 1978. In view of this matter, the writ petitioner is entitled for pension as applicable under the Tamil Nadu Pension Rules and the respondents are directed to grant pension to the petitioner by treating the period of qualifying services as 10 years under

> the provisions of the Tamil Nadu Pension Rules as stated supra and accordingly, calculate the pensionary benefits and disburse the same with arrears as applicable as per rules within a period of twelve weeks from the date of receipt of a copy of this order.
>
> 5.Accordingly, the writ petition stands allowed. However, there shall be no order as to costs."

12. Being aggrieved by the same, instant writ appeal has been filed, with a delay.

13. As no adverse order is passed, notice to the respondents is waived.

14. Mr.R.Udhayakumar, learned Additional Government Pleader, contended that the writ court failed to see that the first respondent herein/writ petitioner started his Government Service as a Compressor Man on 27.04.1971 in Animal Husbandry, Dairying and Fisheries Department. Later he was transferred to Tamil Nadu Cooperative Milk Producers Federation on 01.02.1981. Writ court has noted that the service period of 9 years, 9 months and 3 days and his last three months and three days of service should be construed to be a one half year of service and hence the first respondent herein, is said to have completed the mandatory ten years of service and thus eligible to get pension. He further contended that the writ court failed to note that Rule for construing 3 months and above service as one half year was given in G.O. Ms. No.24 Finance (Pension) Department dated 13.01.1986, and the said GO is not applicable to the case of the first respondent herein/writ petitioner, who ceases to be a Government servant from 01.02.1981 FN.

15. It is the further contention of the learned Additional Government Pleader that the observation of the writ court that the first respondent herein/writ petitioner, has completed the mandatory period of ten years of Government service on 31.01.1981 is contrary to the rules, which existed during the time of transfer of service of the writ petitioner.

16. It is the further contention of the learned Additional Government Pleader that the writ court has not explicitly mentioned whether Rule 43(3) inserted to Tamil Nadu Pension Rules, 1978 vide G.O. Ms. No.24 Finance (Pension) Department dated 13.01.1986 has retrospective effect or not in the order.

17. Heard the learned Additional Government Pleader for the State and perused the materials available on record.

18. Rule 43(3) of the Tamil Nadu Pension Rules, 1978 states that in calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated a completed one half year and reckoned as qualifying service for calculating pension. Rule 43(3) is extracted hereunder:

> "43(3). In calculating the length of qualifying service, fraction of a year equal to [three months] and above shall be treated as completed one half year and reckoned as qualifying service".

19. The Hon'ble Supreme Court in Union of India and another vs. Surender Singh Parmar reported in (2015) 3 SCC 404, while dealing with Regulation 82(a) of Pension Regulations for Navy, 1964 [a similar provision like Rule 43(3) of Tamil Nadu Pension Rules, 1978], at paragraph Nos.8 to 13 held as follows:

> "8. In the present case, the appellant has not challenged the validity of judgment passed by the Bombay High Court wherein Regulation 82(a) was declared as ultra vires. The aforesaid finding of the Bombay High Court was also accepted by the Delhi High Court in the case of the respondent. In absence of any challenge before this Court, we are not inclined to decide the question of validity of Regulation 82(a) which has already been declared ultra vires and violative of Article 14 of the Constitution of India.
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> 9. It is not in dispute that the respondent has completed 13 years, 10 months and 13 days of service under the appellant. In view of declaration of Regulation 82(a) ultra vires, the prayer of the respondent for considering his case for condonation cannot be rejected on the ground that he voluntarily sought permission to leave the service. The aforesaid submission was also accepted by the High Court in the earlier writ petition preferred by the respondent.
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> 10. The note below paragraph 5 of the Government of India, Ministry of Defence instructions dated 30th October, 1987 at clause 5 provides that in calculating the length of qualifying service fraction of a year equal to three months and above but less than six months shall be treated as a completed one half year for reckoning

qualifying service. The said provision reads as follows:-

"5. Qualifying service.

(a) xx xx xx
(b) xx xx xx
Notes:
(1) to (4) xx xx xx

(5) In calculating the length of qualifying service fraction of a year equal to three months and above but less than six months shall be treated as a completed one half year and reckoned as qualifying service."

11. In view of the aforesaid provisions the respondent is entitled to claim total period of service as 14 years for the purpose of calculation of pension. By Government of India, Ministry of Defence order dated 14th August, 2001 administrative power has been delegated to the competent authority under clause (a)(v) the competent authority has been empowered to condone shortfall in qualifying service for grant of pension beyond six months and upto 12 months. The said provision reads as follows:-

"(a)(v) Condonation of shortfall in Qualifying Service for grant of pension in respect of PBOR beyond six months and upto 12 months."

12. In view of the aforesaid provision, the respondent is also entitled to claim for condonation of shortfall in qualifying service for grant of pension beyond six months and upto 12 months. If the aforesaid power has not been exercised by the competent authority in proper case then it was within the jurisdiction of the High Court or Tribunal to pass appropriate order directing the authority to condone the shortfall and to grant pension to the eligible person, which has been done in the present case and we find no ground to interfere with the substantive finding of the Tribunal. However as we find that the respondent was allowed to retire from service on 24th June, 1985 when the instruction dated 14th August, 2001 was not in existence, we hold that the respondent is entitled for such benefit from such date

on which the said instruction came into effect. The Tribunal failed to notice the aforesaid fact but rightly declared that the respondent's shortfall in service stands condoned.

13. In the facts of the case, we are of the view that it should have been made clear that the respondent shall be entitled to benefit w.e.f. 14th August, 2001 and not prior to the said date. The order passed by the Tribunal stands modified to the extent above. The appeal stands disposed of with aforesaid observations.

20. A Hon'ble Division Bench of this court in Secretary to Government vs. M.Palani, decided on 18.01.2011 in W.A. (MD) No.809 of 2010, held as follows:

"7. Rule 43(3) of the Tamil Nadu Pension Rules, 1978 reads as follows, "Rule 43(3) In calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated a completed one half year and reckoned as qualifying service."

The said amendment to the rule was introduced through G.O.Ms.No.762 Finance (Pension) Department, dated 5.9.1994, which came into force from 1.1.1986.

8. Applying the said rule to the facts of this case and having regard to the undisputed fact that the respondent's half of the service rendered on daily wage basis should be taken for calculating pensionable service as per Pension Rule 11(2), we hold that the respondent is entitled to get pension as he has completed more than 10 years of pensionable service. There is no error in the order passed by the learned single Judge and hence we are unable to interfere with the said order.

The writ appeal is dismissed. No costs. Connected miscellaneous petitions is also dismissed."

21. Yet another Division Bench of this court, in Secretary to Government vs. R.Baskaradoss on 27.03.2014 in W.A. No.1122 of 2013, held as follows:

"19. It is an uncontroverted fact that the 1st appellant while making recommendation for regularisation of 15 Investigators, including the respondent herein, their valuable service was also taken into account in Paragraphs 2 and 3 of the G.O.Ms.No.68 dated 04.5.2007 and accordingly, their services were regularised with effect from 04.5.2007. It is also to be pointed out at this juncture that the said Government Order makes it clear that the Investigators are brought under Contributory Pension Scheme.

20. Unfortunately, in so far as, the respondent herein is concerned, he has attained the age of superannuation on 31.7.2008 itself and therefore, the benefits of the said Government Order could not be applicable to him. The fact remains that if half of the temporary service on consolidated wage plus the regular service of 1 year, 2 months and 28 days are taken into consideration, then the respondent had put in 9 years, 7 months and 17 days of service.

21. In an unreported judgment dated 06.12.2013 made in W.P.No.29896 of 2013, as stated supra, the Division Bench of this Court, exhaustively considered the said issue and, it is useful and relevant to extract Paragraph 8 to 11 in the said judgment:-

> "8.The learned counsel for the first respondent also relied on the judgment of the Division Bench of this Court made in Writ Petition No.45465 of 2002 dated 4.10.2007 (Union of India, rep. by the Secretary, Dept. of Posts, Dak Bhawan, New Delhi 110 001 v. M.R.Palanisamy), wherein in similar issue was raised by an E.D.Staff, who served for 29 years before his permanent absorption as Group "D" staff and he was ordered to be granted pension treating the person as completed 10 years of qualifying service, though he was having a regular service of 9 years, 3 months and 29 days, with reference to the E.D. Staff service. The said judgment was challenged before the Hon'ble Supreme Court in SLP No.13829 of 2008 and the Hon'ble Supreme Court also dismissed the Special Leave Petition on 17.10.2008. Thereafter, the very same Department sanctioned pension to the said person, viz., M.R.Palanisamy by order dated 9.10.2009.
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> 9. Even though the order of the Division Bench in Writ Petition No.45465 of 2002 dated 4.10.2007 restricted the relief only to the

first respondent in the said Writ Petition, another Division Bench of this Court in Writ Petition No.22833 of 2010 (T.Jayaraman v. The Post Master General, Central Region, T.N.Circle, Trichy and others) noticing the similar set of facts allowed the Writ Petition by order dated 10.11.2010 noticing the earlier order, which was confirmed by the Supreme Court and which was also implemented by the Department.

10. Again, in the order dated 14.2.2013 passed by this Court in Writ Petition No.22496 of 2009 (Union of India, rep. by the Secretary, Department of Posts, Dak Bhavan, New Delhi 110 001 and others v. G.Thulasidasan), similarly placed person was ordered to be granted pension, considering the long number of years of service as E.D. staff , though the person was not having ten years of completed pensionable service.

11. A Division Bench of Karnataka High Court by order dated 25.3.2013 in Writ Petition No.72872 of 2012 (S-CAT) (Union of India, rep. by the Secretary, Department of Posts, Dak Bhavan, New Delhi 110 001 and others v. B.V.Dambal) also passed similar order."

22. In the considered opinion of this Court, the ratio laid down in the above cited decision is ipso facto applicable to facts of the present case. Though it was under an analogous scheme, namely, Contributory Pension Scheme under Central Civil Services (Pension) Rules. The respondent herein had put in 9 years, 7 months and 17 days of service and therefore, the said service is to be rounded of to 10 years and in that event, the new pension scheme will not apply and consequently, the respondent herein is entitled to the relief as prayed for in the writ petition.

23. As already pointed out, inspite of the fact that the request made by the respondent herein came to be rejected in G.O.Ms.No.245, dated 23.12.2013, the learned Additional Advocate General insisted this Court to dispose of this appeal on merits and therefore, the order which came to be passed subsequent to the

disposal of the writ petition, cannot be put against the respondent/writ petitioner.

24. In the light of the reasons assigned above, this Court is of the considered view that there are no merits in this writ appeal and it deserves for dismissal and accordingly dismissed. No costs. The appellants are directed to sanction pension and other consequential benefits to the respondent/writ petitioner from 01.8.2008 onwards, with arrears, within a period of twelve weeks from the date of receipt of a copy of this judgment. Consequently, M.P.No.1 of 2013 and M.P.No.1 of 2014 are closed.

22. In State of Tamil Nadu vs. K.Thiruvanam Pillai on 20.10.2014 in W.A. No.906 of 2013, a Hon'ble Division Bench of this Court held as follows:

5. Rule 43 (2) (a) (3) of the Tamil Nadu Pension Rules, 1978 states that in calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated a completed one half year and reckoned as qualifying service. In this case, the respondent's pensionable service comes to 9 years 6 months and 23 days. If 3 months period is taken as half years, 6 months should be treated as full year.

6. Similar issue was considered by this Court in W.P.No.4071 of 2008, dated 11.9.2012 by following the judgment of this Court in Writ Appeal No.27 of 2012, dated 13.2.2012, which was affirmed by the Honourable Supreme Court in SLP.No.16119 of 2012, by order dated 10.5.2012.

7. Insofar as the Central Government employees are concerned, similar issue arose with respect to the calculation of 10 years of service under Rule 49 (3) of CCS Pension Rules, 1972 before a Division Bench of this Court in W.P.No.45465 of 2002, dated 4.10.2007. Even though a person was having a regular service of 9 years 3 months and 23 days, considering the E.D. Staff service of 29 years, this Court directed grant of pension treating that the person as completed 10 years of qualifying service. The said judgment was challenged before the Honourable Supreme Court in SLP.No.13829 of 2008, which was also dismissed on 17.10.2008 and the said judgment was implemented by order dated 9.10.2009.

8. Again in W.P.No.22496 of 2009, dated 14.2.2013, a similar issue was considered and relief was granted, even though the said person

was not having 10 years of pensionable service. The Division Bench of Karnataka High Court in W.P.No.72872 of 2012, dated 25.3.2013 also passed a similar order. The above said orders have been followed by the Division Bench of this Court (of which one of us NPVJ was a member) in W.P.No.29896 of 2013 by order dated 6.12.2013. The said order was also confirmed by the Honourable Supreme Court.

9. Similar issue was considered by the Honourable Supreme Court in respect of an employee of the State Bank of Patiala with reference to Chapter IV Regulations 14 and 18 of the State Bank of Patiala (Employees) Pension Regulations, 1995 in the decision reported in (2014) 3 LLN 17 (SC) (State Bank of Patiala Vs. Pritam Singh Bedi & Others), wherein the Supreme Court held that if there is a regulation to count six months and more period as one completed year as pensionable service and the employee concerned having minimum pensionable service, he is entitled to get pension.

10. Considering the said judgments and having regard to the fact that the total pensionable service as per the calculation of the department in this case itself comes to 9 years 6 months and 23 days, the said period should be taken as 10 years pensionable service for the purpose of grant of pension. The said 9 years 6 months and 23 days is calculated as per the particulars given by the Officer of the Animal Husbandry Department as stated supra.

11. The Veterinary Doctor/Assistant Director, Melur, has addressed a letter on 27.9.2007 to the Regional Deputy Director, Animal Husbandry, Madurai-20, wherein also it is stated that the respondent had served continuously from 1.1.1981 to 16.7.1997.

12. Considering the fact that the respondent has retired from service on 31.10.1998, the appellants are bound to sanction pension from 1.11.1998. The respondent is not entitled to get any interest from 1.11.1998, as his eligibility is settled only now.

13. In fine, the writ appeal is partly allowed with a direction to the appellants to sanction and pay pension and other retirement benefits to the respondent treating that he had completed 10 years of pensionable service as on 31.10.1998. The appellants are also directed to

pay the arrears of pension from 1.11.1998, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Connected miscellaneous petition is closed.

23. In Secretary to Government vs. S.Kamachi on 09.04.2015 in W.A. No.523 of 2015, a Hon'ble Division Bench of this court held as follows:

> 7. Rule 43(3) of the Tamil Nadu Pension Rules, 1978 clearly prescribes that if fraction of service is within three months, it should be treated as half year of service. In that event, after treating the half of the service spent as daily wages, the total service of the writ petitioner is computed to be more than 9 years and 6 months. Applying the provision of Rule 43(3) of the Tamil Nadu Pension Rules, the remaining period has to be treated as half year service. We do not find any infirmity or illegality in the order rendered by the learned Single Judge, warranting interference.
>
> 8. Accordingly, the writ appeal is dismissed. No costs. Consequently connected miscellaneous petition is closed.

24. In the case on hand, the first respondent herein/writ petitioner has completed 9 years, 9 months and 3 days. Thus in terms of Rule 43(3) of the Tamil Nadu Pension Rules, 1978, the first respondent herein/writ petitioner is eligible for computing the period as one full year and accordingly, it has to be construed that the petitioner had completed 10 years service, for the purpose of grant of pension under Tamil Nadu Pension Rules, 1978.

25. In view of the above decisions and discussions, we do not find any manifest error or illegality in the order of the writ court, directing the appellants herein to grant pension to the first respondent herein/writ petitioner by treating the period of qualifying services as 10 years under the provisions of the Tamil Nadu Pension Rules, as stated supra and accordingly calculate the pensionary benefits and disburse the same, with arrears as applicable as per rules.

26. There is no merit in the writ appeal and the same is dismissed at the threshold. Appellants herein are directed to comply with the order of the writ court, within a period of six weeks from the date of receipt of a copy of this judgment. However, there shall be no order as to

costs. Consequently, the connected civil miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

1.The Government of Tamil Nadu
Rep. by its Secretary to Government
Animal Husbandry, Dairying and Fisheries Department
Fort St. George, Chennai - 600 009

2.The Commissioner for Milk Production and
Dairy Development
Madhavaram Milk Colony
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3.The Accountant General (A&E)
Chennai - 600 018

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A.SK(06/02/2019)