

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 31.07.2018****CORAM:****THE HONOURABLE MR.JUSTICE R.SURESH KUMAR****W.P. (MD) Nos.16896 and 16921 of 2018****WEB COPY**

Sethurama Pandiyan ... Petitioner in W.P.(MD)No.16896 of 2018

S.Muniyandi ... Petitioner in W.P.(MD)No.16921 of 2018

-Vs-

1.The Secretary to the Government,
Revenue Department,
St.George Fort,
Chennai-9.

2.The District Collector,
Virudhunagar District,
Virudhunagar.

3.The Thasildar,
Srivilliputhur Taluk,
Virudhunagar District.

... Respondents in both petitions

Prayer in W.P. (MD) No.16896 of 2018: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondents to count the petitioner's service rendered as Thalayari prior to 01.06.1995 along with regular service for the purpose of pension and also direct the respondents to revise the pension of the petitioner based on the representation dated 27.06.2018 preferred by the petitioner.

Prayer in W.P. (MD) No.16921 of 2018: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondents to count the petitioner's service rendered as Thalayari prior to 01.06.1995 along with regular service for the purpose of pension and also direct the respondents to revise the pension of the petitioner based on the representation dated 28.06.2018 preferred by the petitioner.

For Petitioners

: Mr.V.P.Rajan

For Respondents

: Mrs.S.Srimathy, in WP(MD)16896/18
Special Government Pleader.

(in both writ petitions)

Mr.K.Saravanan G.P in WP(MD)16921/18

COMMON ORDER

The prayer sought for in these writ petitions is for a Writ



of Mandamus, directing the respondents to count the petitioners' services rendered as Thalayari prior to 01.06.1995 along with regular service for the purpose of pension and also direct the respondents to revise the pension of the petitioners based on their representations dated 27.06.2018 and 28.06.2018.

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2. Heard the learned counsel appearing for the petitioners and the learned Special Government Pleader appearing the respondents.

3. By consent of both parties, these Writ Petitions are taken up for final disposal.

4. In both the cases, the respective petitioners are the retired Village Headman (Thalaiyari).

5. According to the petitioner, in W.P.(MD)No.16896 of 2018, he was appointed as Village Assistant in Moovaraivendran Village on temporary basis, by the order of the third respondent herein dated 03.04.1987 in the permanent vacancy. Subsequently, he was appointed in the post of Village Assistant permanently with effect from 06.07.1995 on consolidated pay. Thereafter, his service as Village Assistant was regularized in the year 1995 and he was brought under time scale of pay. Thereafter, the petitioner, having served for several years, retired from service on 30.04.2014.

6. According to the petitioner in W.P.(MD)No.16921 of 2018, he was appointed as Village Assistant in Kodikulam village on temporary basis, by the order of the third respondent herein dated 18.10.1970 in the permanent vacancy. Subsequently, he was appointed in the post of Village Assistant permanently with effect from 06.07.1995 on consolidated pay. Thereafter, his service as Village Assistant was regularized in the year 1995 and he was brought under time scale of pay. Thereafter, the petitioner, having served for several years, retired from service on 30.04.2006.

7. Even though the petitioners had been serving as Village Assistants for more than 30 years, they had not been given full pension initially as they had not, according to the respondents, having qualified service of 10 years.

8. In this regard, the grievance of the petitioners is that, if their services from the date of appointments i.e., from 03.04.1987 till 30.04.2014 and from 18.10.1970 till 30.04.2006 respectively, are taken into account or at least 50% of the said service is taken into account for the purpose of pension and other services from the government, the petitioners would be entitled to get full pension.



9. However, the respondents have not taken into account the past services rendered by the petitioners prior to 1995 and in this regard, even though representations have been made, the same have not been considered. Therefore, the petitioners are before this Court.

10. As has been rightly pointed out by the learned counsel for the parties, the issue raised in these writ petitions is no more res integra, as these issues have already been considered and decided by this Court. After having considered all those aspects, I have passed the order in the judgment in S.Thavamani's case on 10.07.2018 in W.P.(MD)No.14245 of 2018.

11. For the sake of better understanding and clarity, the relevant portion of my order is extracted hereunder:

"11. I have heard the learned counsel appearing for the petitioners.

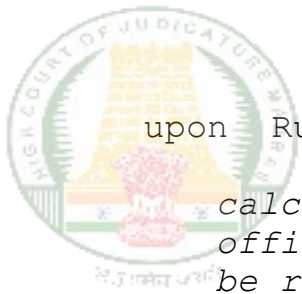
12. The learned counsel appearing for the petitioners would make submissions that, admittedly, all these petitioners were appointed as Village Assistants long years back and after having rendered several years of service, their services have been regularized from 01.06.1995, by bringing them under time scale of pay. Though their services were regularized and they have been brought under time scale of pay, these petitioners had been working as Village Assistants for several years continuously on consolidated pay.

13. In this regard, the learned counsel would submit that, in most of the cases, the appointment or promotion initially made to the respective petitioners is on permanent basis.

14. The learned counsel appearing for the petitioners would further submit that, since they had been appointed permanently, of course, on consolidated pay, the job nature of Village Assistants is full time. Therefore, the petitioners are entitled to get regularization from the date of appointment. Assuming that they had been given regularization, brought under time scale of pay only from 01.06.1995, at least for the pensionary benefits, their past services shall be taken into account.

15. In this regard, the learned counsel appearing for the petitioners would heavily rely upon the relevant rules, <https://hcservices.mca.gov.in/HCServices/Services/Details.aspx?ServiceID=1> Tamil Nadu Village Assistants' Pension Rules, 1995 (hereinafter referred as 'the Rules').

16. In this regard, the learned counsel would rely



upon Rule 4(a) of the Rules, which reads thus:-

"4(a) In computing the length of service for calculation of pension and gratuity temporary, officiating and permanent (full time) service shall be reckoned as qualifying service."

17. By relying upon the Rules, the learned counsel appearing for the petitioners would submit that, since the Special Rules made in this regard, enabling the authorities to extend the pensionary benefits to these kind of workers i.e., Village Assistants, by taking into account the entire past service rendered by them, the denial of the said benefit by the respondents to the petitioners is unjust, as it goes against the spirit of the very rule itself.

18. The learned counsel appearing for the petitioners would also submit that, the issues raised in this batch of writ petitions as to whether the past services, rendered by these petitioners before they have been brought under regular time scale of pay should also be counted for pensionary benefits, had already been considered by this Court in number of occasions and it was decided in favour of the employees / pensioners.

19. In this regard, the learned counsel appearing for the petitioners would rely upon some of the decisions of this Court and would urge that, in view of the settled legal position and in view of the rule position, as has been referred to above, since the petitioners are entitled to seek the benefit of full pension, by taking into account the past service rendered prior to 1995 also, the prayer sought for herein may be considered and in this regard, rejection order passed in some of the writ petitions by the respective respondents also are liable to be set aside.

20. Per contra, Mr. P. Gunasekaran, learned Standing counsel appearing for the Accountant General of Tamil Nadu, would submit that, no doubt, the Rule will apply to the Village Assistants in respect of their pensionary and retirement benefits. The Rule shall come into force only on first June, 1995 and thereafter, whatever the services rendered by the Village Assistants would be reckoned for the purpose of pension. Herein, the case in hand, assuming that 4(a) of the Rules, enabling the authorities to compute the length of service of the Village Assistants for calculation of pension and gratuity by taking into account temporary, officiating and permanent service, for the said benefit, all these persons should have worked as full time Village Assistants and unless they prove that they had been appointed and had been working as full time Village Assistants for several years till 1995 invocation of Rule 4 (a) of the Rules may not be possible to the case of the petitioners and therefore, the decision taken in this regard by the respondents rejecting the claim of these petitioners to take past service prior to 1995 as a qualifying service



for the purpose of pension, is perfectly justifiable.

21. In the same line, Mr.D.Muruganantham, learned Additional Government Pleader appearing for the official respondents in W.P.(MD)No.14245 of 2018 would submit that, all these Village Assistants, admittedly, had been working on temporary basis prior to 1995. While they brought under time scale of pay on regular basis from 01.06.1995, it has been specifically mentioned in the relevant Government Order that, these Village Assistants, who had been hitherto working as part time Village Assistants, would be brought under the regular time scale of pay on regular basis from 01.06.1995.

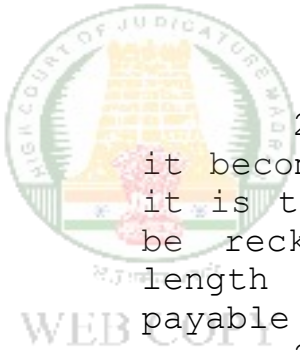
22. Therefore, the learned Additional Government Pleader would submit that, even though these petitioners were brought under regular time scale of pay by regularizing their services from 01.06.1995, there is no scope for calculating their past service rendered by them on temporary basis, that too, as Part Time employees and therefore, the Rule 4(a) as referred to above, heavily relied upon by the petitioners' side cannot be invoked in the case of the petitioners and therefore, the benefit they sought for i.e., full pension by calculating their past service prior to 1995 as qualifying service, cannot be acceded to.

23. I have considered all those rival submissions made by the learned respective counsel appearing for the petitioners as well as the learned Additional Government Pleader and the learned counsel appearing for the Accountant General and also perused the materials placed before this Court carefully.

24. It is an admitted fact that, all these petitioners had been appointed as Village Assistants at various point of time long years back i.e., in 1970s and 1980s. After having served for several years, these petitioners were brought under time scale of pay by regularising their services with effect from 01.06.1995. Even though their service had been regularized from 01.06.1995, there had been no mechanism to consider their grievance with regard to the pension as to whether the petitioners had been entitled to get full pension or otherwise and if so, on what basis.

25. Only in that context, the Government had come forward to issue Government Order in G.O.(3D)No.9, Revenue (sect) 7(1) Department, dated 28.02.2006, whereby the Rule namely, Tamil Nadu Village Assistants' Pension Rules, 1995 was brought into force.

26. In the said Rule under the Chapter II - Pension and Gratuity, Rule, 4(a) clearly envisages that, for the purpose of computation of the length of service for calculation of pension and gratuity, service rendered by the Village Assistants on temporary basis or officiating basis or permanent basis, of course by way of full time employee, shall be reckoned as a qualifying service.



27. By having the bare reading of the said Rule 4(a), it become clear that whatever the nature of service whether it is temporary or permanent or even officiating that shall be reckoned as a qualifying service for computation of length of service for calculation of pension and gratuity payable to the Village Assistants.

28. The only objection raised by the Additional Government Pleader as well as the counsel appearing for the Accountant General in this regard is that, the word 'full time' mentioned in Rule 4(a) of the Rules is crucial, as the said temporary, officiating or permanent past service rendered by them shall be reckoned as qualifying service for the purpose of pensionary benefits with a condition that if such service rendered by them should have been only as full time service.

29. Herein, the case in hand, all these petitioners had been appointed as Village Headman or Village Assistants otherwise called at that time as "Thalaiyari".

30. In this regard, in the first case i.e., in W.P. (MD) No. 14245 of 2018, the learned counsel appearing for the petitioner would invite the attention of this Court on the language used in the appointment order made in this regard in respect of the said petitioner.

31. On 03.08.1973, the said petitioner was appointed as Village Assistant (Thalaiyari). The order reads thus:-

“ஆகவே வடக்கு அண்டக்குடி தற்காலிக தலையாரி நாகுத் தேவர் தலையாரி வேலையிலிருந்து நீக்கப்பட்டு அவருக்கு பதிலாக வடக்கு அண்டக்குடி கிராம சதானந்த நாடார் மகன் தவமணி வடக்கு அண்டக்குடி தலையாரியாக தற்காலிகமாக மறு உத்திரவு வரை நியமிக்கப்படுகிறார். இந்த நியமனத்திலிருந்து அவருக்கு நோட்டீஸ் ஏதும் கொடுக்காமல் விலக்குவதற்கு அதிகாரம் சர்க்காருக்கு இருக்கிறது எனவும் அறிவிக்கப்படுகிறது.”

32. Subsequently, the very same petitioner had been appointed permanently as Village Headman (Thalaiyari), by order dated 23.11.1976 and the said order reads thus:-

“மேலே கண்ட தகுதிகள் யாவும் பெற்றுள்ள திரு.தவமணி என்பவரை வடக்கு அண்டக்குடி கிராமத்தில் 1.12.76 தேதி முதல் நிரந்தர அடிப்படையில் தலையாரியாக நியமனம் பெற செய்யப்படுகிறது.

(ஓம்) ***

துணைத் தாசில்தார்,
இளையாங்குடி.”

and he has been permitted to retire on superannuation by 29.02.2004, by the order dated 01.03.2004, which reads thus:-

“இளையாங்குடி வட்டம், சாலைக்கிராமம் உள் வட்டம், வடக்கு அண்டக்குடி குரூப், கிராம உதவியாளராகப் பணிபுரிந்து வரும் திரு.தவமணி என்பவர் வயது முதிர்வின் காரணமாக 29.02.2004 பிற்பகல் 12.00 மணிக்குப் பெறுவதற்கு அனுமதியளித்து இதன் மூலம் உத்தரவிடப்படுகிறது.”



33. The learned counsel appearing for the petitioners would submit that, similar appointment orders have been given in respect of all other petitioners.

34. On reading of the appointment order, one can easily find that, the appointment was given on temporary basis, subsequently, given on permanent basis. Without any break in service, the respective petitioners had been continuously working till they attained superannuation. The appointment order does not suggest that the appointment made to the respective petitioners had been only on part time basis.

35. Moreover, the job of Village Headman, which was called as "Thalaiyari", in those days, cannot be a part time job. The reason being that, the Village Headman will be in charge of all revenue issues in that Village, who shall report to the Village Munsif / Village Karnam in those days. Subsequently, when the Village Munsif / Village Karnam were replaced by the Village Administrative Officer, the Village Assistant/Headman has to report to the Village Administrative Officer.

36. The Village Administrative Officers are full time employees and they are expected to stay at the Village, where they have been posted. All revenue matters has to be first dealt with in the Village only by the Village Administrative Officer who is to be assisted by the Village Assistant.

37. The Village Administrative Officers are the full time employees of the Government to whom the Village Assistant has to render service by assisting them, and therefore, they cannot be part time employees. If they are part time employees, the Village Administrative Officers cannot get assistance from the Village Assistants on full time basis. This was the situation prevailing even prior to 1980, where the villages were administered, on the revenue side, by the Village Munsif / Village Karnam, with whom these Village Assistants, who were called during that time as "Thalaiyari", had been working as full time employees.

38. That is the reason why even at the time of appointment order made in the year 1973 or 1976, the appointment had been made to the petitioner as, either temporary Village Assistants (Thalaiyari) or permanent Assistants (Thalaiyari). Therefore, the objection raised by the respondents that the rule with regard to the pension for these petitioners, especially, Rule 4(a) of the Rules, shall not be made applicable to these petitioners, who are not full time employees, cannot be accepted.

39. Yet another reason for rejection of the said plea made by the respondents would be that, no Village Headman or Assistant i.e., Thalaiyari could be a part time employee and therefore, assuming that the word 'full time' mentioned in the Government Order, that will become otiose,

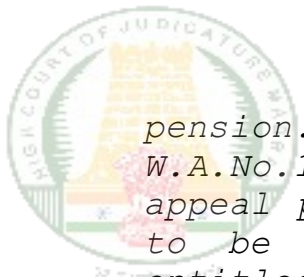


as all these Village Assistants are only full time employees and therefore, the said word "Part time" mentioned in the Government Order cannot be the reason for denying the said benefit conferred under the main rule.

40. However, in cases, where the vocational instructors appointed on part time basis in those years, since had been subsequently, made permanent or brought into regular time scale of pay on full time basis, they had been denied the benefit of pensionary benefits, as they do not have the qualifying service, if it is calculated from the date of their regularization by way of full time service.

41. In that regard, when the issue came up before this Court as to whether those part time instructors, who were working in various schools and institutions in the Education Department, whether their past service rendered as part time instructors can be reckoned for the purpose of calculating the pension, this Court had taken the view that, in view of the amendment made in Rule 11(4) of the Tamil Nadu Pension Rules, 1978, those who rendered part time service would be entitled for reckoning 50% of their past service before they brought under regular time scale of pay, for the purpose of pensionary benefits. In this regard, a learned Judge of this Court in the case of **V.Ragavan Vs. State of Tamil Nadu represented by its Secretary, School Education Department and others** has elaborately discussed the issue and passed the following order:-

"3. The petitioner was appointed as a single part time Vocational teacher on 08.10.1980 and he was regularised on 01.04.1990 in such capacity. Thereafter, he was promoted as P.G. Assistant (Commerce) and retired from service on 30.03.2013 on attaining the age of superannuation. The Government as well as the private schools were engaging number of qualified persons as Teachers for the Vocational subjects either as Double part time or Single part time Teachers according to their needs. All of them were employed indefinitely for years together. After repeated representations and agitations, the Government, in order to bring them under time scale of pay in a phased manner, directed to fill up 800 posts for the Vocational Instructors in G.O. Ms.No.712 Education Department dated 28.05.1990 by appointing them as Double part time Teachers. Further, G.O.No.68 dated 20.03.2007 was passed stating that the Vocational Teachers can be appointed on par with B.T. Assistants. After the retirement of the petitioner, the service rendered by him as part time Vocational Teacher from 08.10.1980 to 31.03.1990 was not taken into account while calculating the pension. Under similar circumstances, this Court in W.P.No.39177 of 2002 dated 16.04.2009 directed the respondents to count 50% of the part time service rendered by the petitioner therein for the purpose of calculating the



pension. A writ appeal filed challenging the said order, in W.A.No.1702 of 2010 was dismissed on 20.09.2010. Further appeal preferred before the Hon'ble Supreme Court also came to be dismissed. Therefore, the petitioner is also entitled to similar relief."

42. Insofar as these Village Assistants are concerned, exactly, same issue had been dealt with by a learned Judge of this Court in a batch of cases in W.P.(MD)No.12521 of 2016 etc., batch in **Udaiyar Vs. The Accountant General (A&E) Pension, Chennai and others**. In the said order, the learned Judge of this Court, after having considered all these aspects, has passed the following order:-

"12. Despite consequential Government orders and judgments implementing several judgment of this Court in similar Writ Petitions filed by Thalayari/Village Assistant", the learned counsel appearing for the first respondent referred to the counter affidavit of the first respondent and submitted that the Government introduced Tamil Nadu Village Assistants' Pension Rules, 1995, and brought them under the Special time scale of pay. It is further submitted by the learned counsel for the respondents that the petitioners are not entitled to rely upon the Tamil Nadu Pension Rules 1978, as they were covered by the Special Rules in Tamil Nadu Village Assistants' Pension Rules, 1995. Even the judgment referred above, would indicate that the provisions of Tamil Nadu Village Assistants' Pension Rules, 1995, provide for computing the length of service that was rendered by the petitioners therein as temporary, officiating and permanent service as qualifying service.

13. This Court is not inclined to accept the stand taken by the respondents in their counter affidavit. As a result, all the above Writ Petitions are allowed. The respondents are directed to pay pension as per the Tamil Nadu Pension Rules, 1978, by taking into account of the period of service rendered by the petitioners prior to 01.06.1995 for the purpose of calculating pension. The respondents are directed to complete this exercise within a period of three months from the date of receipt of a copy of this order."

43. Even though Rule 4(a) of the Rules, 1995 does not restrict that only 50 % of the past service rendered by the Village Assistants before they brought under time scale of pay and regularised from 01.06.1995, alone shall be taken into account and the rule, has provided for the entire service, whether temporary or officiating or permanent shall be reckoned as qualifying service in computing length of service for calculation of pension and gratuity, this Court cannot give any interpretation or meaning to calculate the entire past service rendered by these Village Assistants as qualifying service for the purpose of pension.



44. The reason being that, for all Government employees, the Tamil Nadu Pension Rules, 1978 would be made applicable. Rule 11(4) of the said Rules provides that half of the service rendered by the State Government employee under non-provincialised service shall be allowed to be accounted for pensionary/Retirement benefits along with regular service subject to certain conditions.

45. Only by virtue of Rule 11(4) of the Tamil Nadu Pension Rules, 1978, those who rendered service in non-pensionable service or they rendered before they brought under regular time scale of pay whether to be calculated for the purpose of full pension for those employees, was answered in the said rule, whereby, half of the service i.e., 50 % of the said service rendered by the employees, who were under non-provincialised service shall be taken into account for the purpose of pensionary benefits.

46. Herein, the case on hand, the stand of the respondents that, prior to 01.06.1995, the petitioners, since had not been working in pensionable service, their service rendered all these years till 31.05.1995 shall not be taken into account for the purpose of pensionary benefits.

47. If Rule 11(4) is applied to these cases, certainly, atleast 50% of the past service rendered by these Village Assistants, like, the petitioners would be reckoned as qualifying service for the purpose of pension.

48. Since the Special Pension Rules i.e., Tamil Nadu Village Assistants' Pension Rules, 1995 has been issued with effect from 01.06.1995, the pension proposals can be dealt with only under these Special Rules insofar as the Village Assistants are concerned.

49. However, if reading conjointly rule 11(4) of the Tamil Nadu Pension Rules, 1978 and Rule 4(a) of the Tamil Nadu Village Assistants' Pension Rules, 1995, it can be easily understood that, the intention of the rule makers is to provide full or maximum pension to the extent the employees entitled by calculating or taking into account the past service rendered by such employee during the non-pensionable service or period. The said intention of the rule makers cannot be deprived by giving different interpretation than the one ought to be interpreted, by giving direct meaning of the said Rules.

50. In that situation, the Rule 4(a) of the Special Rules, even though does not restrict that only 50% of the past service in non-pensionable service shall be taken into account, by taking clue from 4(a) of the Special Rules, which would be applicable to the Village Assistants, the petitioners cannot claim any benefit by compelling to take entire past service prior to 1995, as qualifying service for pensionary benefits. Therefore, the positive view to be taken in this regard is that, these



petitioners shall be entitled to seek 50% of the past service rendered by them prior to 01.06.1995, as qualifying service for the purpose of pensionary benefits.

51. In view of these discussions and in view of the orders passed by this Court in number of cases, as has been referred to above and by taking into account the rule position in this regard and also taking into account the facts that, admittedly, all these petitioners had been appointed long back as Village Assistants and had been rendering service for several years before they have been brought under regular time scale of pay from 01.06.1995, this Court is inclined to pass the following order in all these cases:

(i) The respondents are directed to consider the request of the petitioners for providing full or eligible pension, by reckoning the temporary, officiating and permanent service of the petitioners rendered by them prior to 01.06.1995, from the date of their respective appointment, as qualifying service, for computing the length of service for calculation of pension and gratuity ;

(ii) While calculating the said service, only 50% of the said service rendered by them from the date of appointment till 31.05.1995 shall alone be considered as qualifying service ; and

(iii) By calculating the said service, whatever the eligible pension for each of these petitioners that shall be calculated and the same, with arrears, shall be paid by the respondents to the respective petitioners, within a period of twelve weeks from the date of receipt of a copy of this order.

52. In view of the above directions, the impugned orders passed in W.P.(MD)Nos.8714, 6744 and 6745 of 2018 are hereby quashed and the matters are remitted in respect of the said writ petitions to comply with the aforesaid directions.

53. With these directions, all these Writ Petitions are ordered, accordingly. No costs."

12. In view of these discussions and in view of the orders passed by this Court in number of cases, as has been referred to above and by taking into account the rule position in this regard and also taking into account the facts that, admittedly, the petitioners had been appointed long back as Village Assistants and had been rendering service for several years before they have been brought under regular time scale of pay from 01.06.1995, this Court is inclined to pass the following order:

(i) The respondents are directed to consider the request of the petitioners for providing full or eligible pension, by reckoning the temporary, officiating and permanent service of the petitioners rendered by them prior to 01.06.1995, from the date of their respective appointment, as qualifying service, for computing



the length of service for calculation of pension and gratuity ;

(ii) While calculating the said service, only 50% of the said service rendered by them from the date of appointment till 30.11.1995 shall alone be considered as qualifying service ; and

(iii) By calculating the said service, whatever the eligible pension for the petitioners that shall be calculated and the same, with arrears, shall be paid by the respondents to the petitioners, within a period of twelve weeks from the date of receipt of a copy of this order.

13. In view of the above directions, the matter is remitted to the respondents.

14. Accordingly, these writ petitions are allowed. No costs.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Secretary to the Government,
Revenue Department,
St. George Fort,
Chennai-9.

2. The District Collector,
Virudhunagar District,
Virudhunagar.

3. The Thasildar,
Srivilliputhur Taluk,
Virudhunagar District.

+2 cc to Mr. V. P. Rajan , Advocate SR.No. '76346, 76341

+1 cc to The Special Government Pleader Sr.No. SR.No. 76229, 76230

pnn/rr

W.P. (MD) Nos. 16896 and 16921 of 2018

31.07.2018

KM/ (22.03.2019) 12P 7C