



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : **16.04.2019**

Delivered on : **22.10.2019**

CORAM:

**THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND
THE HONOURABLE MR.JUSTICE S.S.SUNDAR**

W.A.(MD)No.370 of 2019

K.Velmayil : Appellant/Petitioner

Vs.

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

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

3.The District Collector,
Madurai District,
Madurai.

: Respondents/Respondents

PRAYER: Appeal filed under Clause 15 of the Letters Patent Act, praying to set aside the orders dated 31.01.2019 in W.P.(MD)No.70 of 2019 and in all other similar writ petitions by the above common order and consequently allow all the writ petitions and direct the first and second respondents i.e., the Secretary to Government, Revenue Department, Chennai and Commissioner of Revenue Administration, Chennai to count 50% of services of Thalayarais for the purpose of calculation of pension as similarly ordered recently in G.O.Ms.No.473, Revenue Department, dated 03.12.2018 and to send the revised pension proposals, within a specified time frame that may be fixed by this Hon'ble Division Bench on par with the Division Bench orders confirmed by the Supreme Court.

Prayer in WP(MD) . 70/ 2019 :

Writ Petition is filed under 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 , Secretariat, Chennai to pass orders counting 50% of services of the petitioner put in by

<https://hcservices.ecourts.gov.in/hcservices/>



him as Thalayari for the period from 07/01/1983 to 31/05/1995 for the purpose of calculation of pension along with regular services put in by him as village Assistant and Village Administrative Officer and arrange to send revised pension proposals within a specified time frame, that may be fixed by this Hon'ble Court.

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For Appellant : Mr.S.Visvalingam
For Respondents : Mr.A.Muthukaruppan
Additional Government Pleader

JUDGMENT

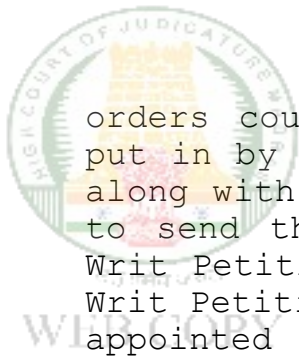
N.KIRUBAKARAN, J.

AND

S.S.SUNDAR, J.

The Petitioner in W.P.(MD)No.70 of 2019 has preferred this appeal as against the common order passed by a learned Single Judge of this Court in W.P.(MD)No.70 of 2019 and a batch of cases.

2.The appellant was appointed as permanent Thalayari on consolidated pay as per the proceedings of the Tahsildar of Nilakottai, dated 07.01.1983. As per the appointment order issued to the appellant, it is seen that the appointment of appellant is to fill the vacancy in the post of Thalayari on permanent basis after following a selection process. It is not in dispute that the appellant was serving as Thalayari continuously without any break for the period from 07.01.1983 to 31.05.1995 in Kondayampatti Village, Vadipatti Taluk, Madurai District. The appellant was absorbed in the regular time scale of pay and the post he was holding was redesignated as Village Assistant with effect from 01.06.1995 as per G.O.(Perm) No.625, Revenue Department, dated 06.07.1995. The appellant was, thereafter, promoted as Village Administrative Officer as per the proceedings of the District Revenue Officer, Madurai, dated 27.10.2015. It is not in dispute that the appellant was working as Village Administrative Officer from 05.11.2015 till he attained superannuation on 30.06.2017. It is stated that the respondents sanctioned pension to the appellant counting the services put in by the appellant, as Village Assistant from 01.06.1995 to 04.11.2015 and the services put in by him as Village Administrative Officer from 05.11.2015 to 30.06.2017. The grievance of the appellant was that the services put in as Thalayari for the period from 07.01.1983 to 31.05.1995 on consolidated pay was not counted for calculating pension. It is contended by the appellant that as per Rule 11(4) of the Tamil Nadu Pension Rules, 1978, 50% of the services put in by a person on consolidated pay or daily wage, even in respect of non-provincialised service has to be taken for the purpose of calculating the pension. The Writ Petition filed by the appellant was considered along with the batch of Writ Petitions filed for issuance of Writ of Mandamus directing the Principal Secretary to Government, Revenue Department, to pass

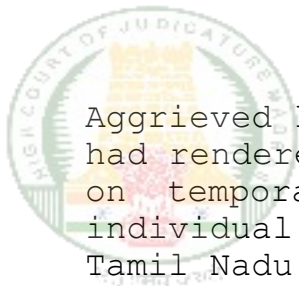


orders counting 50% of the services of the respective petitioners put in by them as Thalayaris for the purpose of calculating pension along with regular services put in by them as Village Assistant and to send the revised pension proposals within time frame. All the Writ Petitions were taken up together as the petitioners in all the Writ Petitions are the retired Village Assistants who were initially appointed as Thalayaris and subsequently, absorbed in the regular time scale of pay. Referring to the two judgments of learned Single Judges of this Court taking contrary view, the learned Single Judge, directed the matters to be placed before the Chief Justice for referring the matter to Larger Bench to decide the question related to applicability of Rule 11(4) of Tamil Nadu Pension Rules, 1978 to Village Assistant who were originally appointed as part-time Thalayaris and whose services were regularised with effect from 01.06.1995 or later. Though the learned Single Judge has considered the two judgments, which according to him, has given conflicting views, this Court is of the view that the matter has been settled by several precedents and that the Government has implemented the judgments in several other cases decided in favour of persons similarly placed like the appellant.

3.The appellant and several other persons were appointed as Village Assistants or Thalayaris about 30 years back. Having regard to the nature of service the Thalayaris were rendering, it is submitted that the post occupied by the petitioner as Village Assistant or Thalayari must be taken as permanent. The contention of the respondents that the persons who were appointed and working as Thalayaris were not holding any permanent post and that they are appointed purely on temporary or part time basis was negatived by this Court in several precedents. It was held in several precedents that persons who were engaged as Thalayaris were not doing part time or temporary job as their jobs involve whole time employment. In every Village Panchayat, a Village Administrative Officer is functioning with a field assistant who was earlier named as Thalayari.

4.The post of Thalayari is an indispensable post in any village and the incumbent was the only person who was engaged in every field work relating to the entire lands in a revenue village. His field assistance for maintaining the statutory records relating to land holdings survey and boundaries, irrigation channels and other public records to be maintained by the revenue under various statutes was remarkable. It is unfortunate that the Government did not realise the nature of assistance they were rendering to the revenue department for a long time. Somehow the post of Thalari/Village Assistant was regularised and made permanent and were absorbed in the regular time scale of pay with effect from 01.06.1995.

5.The respondents refused to consider the request of the Village Assistants for payment of pension on the ground that they <https://hcservices.ecourt.gov.in/resources> the minimum pensionable service of 10 years.



Aggrieved by the order rejecting pension for Village Assistants who had rendered service for more number of years on consolidated pay or on temporary basis, several Writ Petitions were filed by the individual Village Assistants placing reliance on Rule 11(4) of Tamil Nadu Pension Rules, 1978.

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6.Rule 11(2) and 11(4) of Tamil Nadu Pension Rules, 1978 are extracted hereunder:

"11. Commencement of qualifying service -

...

(2)Half of the service paid from contingencies shall be allowed to count towards qualifying service for pension along with regular service subject to the following conditions:

(i).Service paid from contingencies shall be in a job involving whole time employment and not part time for a portion of the day.

(ii).Service paid from contingencies shall be in a type of work or job for which regular posts could have been sanctioned, for example Chowkidar.

(iii).Service shall be for which the payment is made out on monthly or daily rates computed and paid on a monthly basis and which, though not analogous to the regular scale of pay, shall bear some relation in the matter of pay to those being paid for similar jobs being performed by staff in regular establishments.

(iv).Service paid from contingencies shall be continuous and followed by absorption in regular employment without a break.

(v).Subject to the above conditions being fulfilled, the weightage for past service paid from contingencies shall be limited to the period after the 1st January 1961 for which authenticated records of service may be available.

(vi).Pension or revised pension admissible as the case shall be paid from the 23rd June 1988.

(4) Half of the service rendered by State Government employee under non-pensionable establishment shall be allowed to be counted for pensionary benefits along with regular service under pensionable establishment subject to the following conditions.

(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 subsequent absorbed in regular service under the State



(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 ;

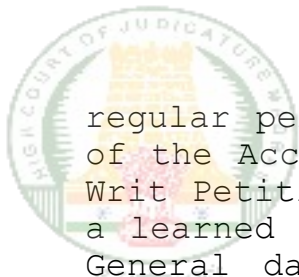
Provided that this sub-rule is applicable to all employees who rendered service under the State Government in non-provincialised service, consolidated pay, honorarium or daily wages basis on or after 1st January 1961 and absorbed in regular service before 1st April 2003.

Provided further that whatever there was break in service before their absorption in regular service before 1st April 2003, the same shall be specially condoned by the orders of the Head of Department in which the employees were regularly absorbed and such period of break, shall not count for the purpose of pensionary benefits."

7.The question that fell for consideration in all the Writ Petitions filed by the appellant and others was whether the appellant and similarly placed persons are entitled to count 50% of their services rendered on daily basis or on consolidated pay along with regular service in the post of Village Assistant for the purpose of pension.

8.After referring to two conflicting decisions, the learned Single Judge, has directed the Registry to place the matter before the Hon'ble Chief Justice for referring the matter to a Larger Bench to decide the question relating to the applicability of Rule 11(4) of the Tamil Nadu Pension Rules, 1978 to Village Assistants who are originally appointed as part-time Thalayaris and whose services were regularised with effect from 01.06.1995. It is to be noted that the learned Single Judge before referring the matter though referred to a decision of the Division Bench of this Court in Writ Appeal (MD) No.16 of 2019, the dissenting note of another learned Single Judge of this Court in **M.Vellaiyan v. The Secretary to Government, Department of Revenue and others** was relied upon to point out that the learned Single Judge in the later judgment has taken note of Tamil Nadu Village Service Rules, 1980 and also Tamil Nadu Village Servant Conduct Rules, 1983 which had not been considered by the Division Bench and several other precedents relied upon by the appellant's counsel. It is in the said circumstances, this Court is expected to consider some of the earlier judgments of this Court and various Government Orders implementing the orders of this Court accepting the plea of persons who are similar to the appellants.

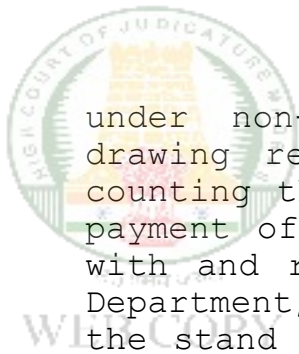
9.Similar request was made by one K.Ponnugurusamy and 8 others. Their representation to add 50% of their services put in by them as Thalayaris for the purpose of pension was rejected by the Accountant General by order dated 24.10.2008, on the ground that in the absence of specific orders from the Government to count the non-pensionable service as qualifying service for pension, they are not eligible for



regular pension as per the existing rules. Aggrieved by the order of the Accountant General, Thiru.K.Ponnugurusamy and 7 others filed Writ Petition (MD) Nos.11094 to 11101 of 2008 before this Court and a learned Single Judge quashed the impugned order of the Accountant General dated 24.10.2008 and directed the respondents to proceed with the petitioners' pension papers and pass consequential orders within twelve weeks. It was specifically held that the writ petitioners are entitled to add 50% of their past service put in by them in terms of Rule 11(4) of Tamil Nadu Pension Rules. As against the order in the above Writ Petitions, dated 06.03.2009, the District Collector, Virudhunagar, filed Writ Appeals in W.A.Nos.204 to 211 of 2011 and the Division Bench of this Court confirmed the common order dated 06.03.2009 made in W.P.(MD)Nos.11094 to 11101 of 2008 and dismissed the Writ Appeals. Thereafter, a Special Leave Petition was also filed in S.L.P.Nos.26586 to 26593 of 2012 as against the order in W.A.(MD)Nos.204 to 211 of 2011 by the District Collector, Virudhunagar District. The Hon'ble Supreme Court also dismissed the Special Leave Petitions. Since the Advocate on records for Government of Tamil Nadu before Hon'ble Supreme Court of India had informed that there is no scope for further review, the Government complied with the direction of this Court in the order dated 06.03.2009 in W.P.(MD)Nos.11094 to 11101 of 2008 filed by Thiru.K.Ponnugurusamy and 7 others. The implementation of the order dated 06.03.2009 in the batch of Writ Petitions was by issuing G.O.Ms.No.173, Revenue [Ser8(1)] Department, dated 29.05.2014.

10.One Karuppiyah filed W.P.(MD)No.15473 of 2014 challenging the order of Tahsildar, Thirumangalam Taluk, Madurai District, rejecting his request to count the services put in by him in the cadre of Thalayari on consolidated pay as per Rule 11(4) of the Tamil Nadu Pension Rules, 1978 along with the regular time scale of pay in the cadre of Village Assistant for the purpose of calculating pension. The learned Single Judge of this Court following few earlier judgments allowed the Writ Petition filed for issuing a Writ of Mandamus directing the Principal Secretary to Government and the District Collector, Madurai to send revised pension proposals to the Accountant General calculating half of the services put in by the respective petitioners as Thalayari. This judgment also was based on Rule 11(4) of the Tamil Nadu Pension Rules, 1978. After G.O.Ms.No.173, Revenue [Ser8(1)] Department, dated 29.05.2014, several writ petitions were allowed rejecting the arguments of the respondents placing reliance on G.O.Ms.No.173, Revenue [Ser8(1)] Department, dated 29.05.2014. It is also relevant to point out that in almost all the judgments wherein G.O.Ms.No.173, Revenue [Ser8(1)] Department, dated 29.05.2014 was relied upon, it is stated that the petitioners in the Writ Petition are entitled to get the benefit of G.O.Ms.No.173, Revenue [Ser8(1)] Department, dated 29.05.2014. The contention on behalf of the respondents that Thalayaris were engaged on temporary basis was specifically rejected by this Court consistently in all the judgments. The further contention of the

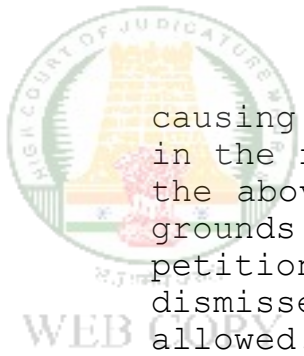
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under non-provincialised establishment and that they were not drawing regular time scale of pay and hence, their request for counting the period of service rendered by them in the Village for payment of pension cannot be accepted, was also specifically dealt with and rejected. A reading of G.O.Ms.No.173, Revenue [Ser8(1)] Department, dated 29.05.2014 would make the position explicit that the stand taken by the respondents with regard to applicability of pension rules was not accepted by this Court consistently in several precedents. Since the Special Leave Petition was dismissed *in limine* it cannot be taken as a precedent. However, before Hon'ble Supreme Court, no other legal issue was raised.

11.The learned Counsel appearing for the appellant relied upon several judgments of Division Bench of this Court including the judgments passed in W.A.(MD) Nos.1044 to 1051 of 2017 wherein the order of the learned Single Judge allowing similar Writ Petitions filed for issuing Writ of Mandamus directing the Principal Secretary to Government to refix the pension of the petitioner counting the service put in by him as Thalayari for the period prior to 31.05.1995 was upheld. The learned Counsel relied upon a judgment of Division Bench of this Court in the case of **Government of Tamil Nadu v. K.Sakthivel** reported in **2018 (1) CWC 689**. That was a case where the plot-watchers who were working on daily wage basis were brought into regular service in 2009 as Forest Watchers. In a Writ Petition filed by retired forest watchers who were earlier worked as plot watchers on temporary basis, they were given the benefit of counting half of their services rendered as plot-watchers on temporary basis along with regular service rendered by them to enable them to get pensionary benefits. Before the Division Bench, an argument was advanced by the learned Counsel appearing for the State and other respondents in the Writ Petitions by referring to the proviso to Rule 11(4) of the Tamil Nadu Pension Rules, 1987 which states that the rules are not applicable to the Government servants appointed on or before 01.04.2003, to services and posts in connection with the affairs of the State which are borne on pensionable establishments whether temporary or permanent. The Hon'ble Division Bench rejected the contention of the respondent State not only by relying upon a few precedents but also by referring to the fact that the earlier decision of the Court had been implemented and that the respondent State cannot be allowed to take a different stand in the subsequent appeals and Writ Petitions to create discrimination among similarly placed persons. In paragraph 30 of the judgment, the Division Bench of this Court has observed as follows:

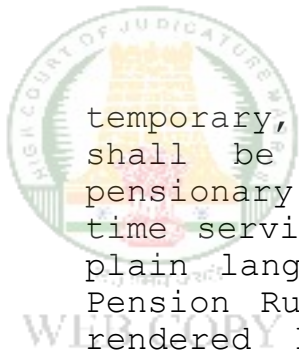
"30.There can be no denying the fact that the appellants themselves have implemented various decisions of the Division Benches, in some of which, no appeals were preferred to the Hon'ble Supreme Court. Therefore, now to take a different stand in the present appeals as well as writ petitions would impermissible and a situation cannot be allowed to prevail



causing discrimination between similarly placed persons. Thus, in the facts and circumstances of the case and in the light of the above discussion, we find that the State has not made any grounds to interfere with the orders passed in the writ petitions and therefore, the writ appeals are liable to be dismissed and the similar writ petitions are liable to be allowed."

12.The learned Counsel appearing for the appellant relied upon another judgment of a learned Single Judge of this Court in the case of P.Chinnaiyan v. The State of Tamil Nadu and 4 others in W.P.No.12656 of 2013. Before the learned Single Judge, the applicability of Rule 11(4) of Tamil Nadu Pension Rules, 1978 to count 50% of services on daily wage basis as Plot Watcher of the petitioner along with regular service rendered by the petitioner as Mali with effect from 20.10.2003 came up for consideration. The learned Single Judge while allowing the Writ Petition considered the scope of Rule 11(2) and 11(4) of Tamil Nadu Pension Rules. It was submitted by the respondent State before the learned Single Judge that Rule 11(4) of the Tamil Nadu Pension Rules, which was introduced only in the year 2010 is applicable only to employees who were absorbed in regular services before 1st April, 2003. The contentions of State was rejected by holding that there is no rationale behind prescribing the cut off date. This judgment was also followed by Hon'ble Division Bench in **Government of Tamil Nadu v. K.Sakthivel and others** reported in **2018 (1) CWC 689**.

13.Most importantly the learned Counsel appearing for the appellant relied upon a judgment of Hon'ble Mr.Justice R.Suresh Kumar in W.P.(MD)No.14245 of 2018 dated 10.07.2018 wherein a person similarly placed filed a Writ Petition for issuing a Writ of Mandamus directing the respondents to count 50% of the services rendered by the petitioner therein as Village Assistant along with the petitioner's regular service from 01.06.1995 to 28.02.2004 and to sanction regular pension in terms of Rule 11 of the Tamil Nadu Pension Rules, 1978. The learned Judge after referring to G.O.Ms.No.9, Revenue (Sect) 7(1) Department, dated 28.02.2006 whereby Tamil Nadu Village Assistants Pension Rules, 1995 was brought into force, found that Rule 4(a) 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, as a full time employee, shall be reckoned as qualifying service. The learned Judge held that an employee whether he was holding the post on temporary or permanent basis, his past service should be reckoned as a qualifying service for computation of length of service for calculation of pension and gratuity payable to the Village Assistants. The only argument advanced before the learned Single Judge in the said case was that the word "full time" mentioned in Rule 4(a) of the Rules is crucial and that service rendered on



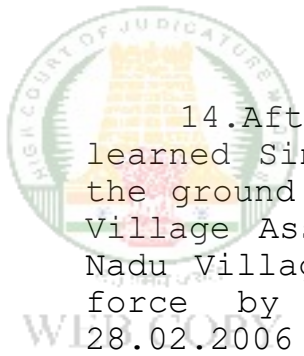
temporary, officiating or permanent basis by the Village Assistants shall be reckoned as qualifying service for the purpose of pensionary benefits only if such service rendered by them is a full time service. However, the learned Single Judge, contrary to the plain language of Rule 4(a) of the Tamil Nadu Village Assistants Pension Rules, 1995 which contemplates counting of entire service rendered by the Village Assistants on temporary basis as a qualifying service, ruled to calculate only 50% of the past service rendered by the Village Assistants before they were brought under time scale of pay and regularised from 01.06.1995. However, a contrary view was taken by the Hon'ble Mr. Justice S. Vaidyanathan in ***M. Vellaiyan v. The Secretary to Government, Department of Revenue and others*** in the following lines:

"13. The Division Bench and the learned Single Judge of this Court in the decisions quoted supra have not taken into account the Tamil Nadu Village Service Rules, 1980 and also the Tamil Nadu Village Servant Conduct Rules, 1983. In terms of the aforesaid rules, the posts held by persons, pursuant to the said Rules, belong to non-pensionable service. If the petitioner's services are counted as pensionable one, only then, Tamil Nadu Pension Rules will apply.

14. Rule 11(4) of the Tamil Nadu Pension Rules, 1978 quoted by the respondents may not be applicable to the facts of this case, as this has been introduced in the year 2010. Even otherwise, reading Rule 11(2) in isolation, the petitioner's services cannot be treated as a pensionable service.

15. It is no doubt true that, there is a Government order extending the benefit to one other employee granting pensionary benefits. That may not be applicable to the facts of this case. In view of the observations mentioned in the said order, which has been extracted supra, it has been made very clear that 'as a special case', the pensionary benefits can be extended and that it cannot be treated as a precedent.

16. Two wrongs will not make a thing right. The Government order extending the benefits to the employee whose name is referred supra itself is bad. But, however, this Court is not passing any order directing the respondents to stop the pensionary benefits, as he has the benefit of pension and will continue to enjoy the benefit. As long as Tamil Nadu Village Servants Service Rules, 1980 does not support the case of the petitioner and also as long as Rule 16(2) is there in the Rules, persons like the petitioner cannot be entitled to the pensionary benefits."

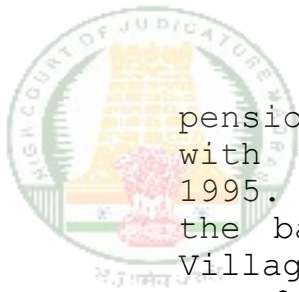


14.After referring to two judgments above referred to, the learned Single Judge has referred the matter to a Larger Bench on the ground that there are two conflicting views and that Tamil Nadu Village Assistants Service Rules, 1980 and Rule 4(a) of the Tamil Nadu Village Assistants Pension Rules, 1995 which was brought into force by G.O.Ms.No.9, Revenue (Sect) 7(1) Department, dated 28.02.2006 were not considered in the earlier judgments which are cited by the appellant as precedents.

15.The learned Counsel appearing for the appellant submitted that the catena of judgments relied upon by him have been implemented by the respondents and that therefore, it is not now open to the respondents to fall back on the interpretation of rules which was never raised or brought to the notice of this Court earlier. It is submitted that this would only create confusion or result in discrimination between the same group. The learned Counsel appearing for the appellant further relied upon the judgment of the Special Bench consisting of five Judges in the case of **J.Alex Ponseelan v. Director General of Police and others** reported in **2014 (2) CTC 337** for the proposition that a Single Judge is bound by a judgment of Full Bench or Division Bench on a point decided and cannot refer the same to a Larger Bench unless contrary view of another Full Bench or Division Bench as the case may be is presented before the Single Judge.

16.The Government Order in G.O.Ms.No.473, Revenue and Disaster Management Department, Services Wing, dated 03.12.2018 is brought to the notice of this Court. After referring to G.O.Ms.No.173 Revenue [Ser.8(1)] Department, dated 29.05.2014, the Government considered the order passed by this Court by a learned Single Judge of this Court in a batch of cases in W.P.(MD) Nos.6905 to 6908 of 2015 before the Madurai Bench of Madras High Court. Though the order of this Court in a batch of Writ Petitions was implemented by the above Government Order, relying upon Rule 4(1) of Tamil Nadu Village Assistants Pension Rules, 1995 it was observed as follows:

"7.The Tamil Nadu Village Assistants Pension Rules, 1995 came into force with effect from 01.06.1995. Rule 4 (a) of the Rules makes it clear that computing length of service for calculation of pension and gratuity, temporary, officiating or permanent (full time) service should be reckoned as qualifying service. As per rule 7 (1), a Village Assistant would be eligible for pension, if he has rendered total qualifying service of ten years or more. Calculation of pension is also given in Rule 7 (ii) and Rule 8 provides for Death Cum Retirement Gratuity and Family Pension calculation is given under Rule, 9. If any person has retired after 01.06.1995 and if he has the qualifying service computed from the date of his original appointment, either temporary, officiating or permanent basis, he will be entitled for



pension, and the pension will be calculated in accordance with the Tamil Nadu Village Assistants Pension Rules, 1995. Hence, calculation of pension should be done on the basis of the Rules 7, 8 and 9 of the Tamil Nadu Village Assistants Pension Rules, 1995.

8. Prior to 01.06.1995, all the Village Assistants were in part time service only. They are all governed by the Tamil Nadu Village Assistants Pension Rules, 1995 and hence, their services upto 01.06.1995 cannot be taken into account for qualifying service under the said Tamil Nadu Village Assistants Pension Rules, 1995. Moreover, the Tamil Nadu Pension Rules, 1978, do not apply to them. Therefore, the Government have decided to file Review Petition against the orders third read above.

9. The Government after careful examination of the above case and decided to implement the Orders passed by the Hon'ble Madurai Bench of Madras High Court in W.P.Nos.6905 to 6908 of 2015 and W.P.(MD)Nos.7446 to 7449 of 2016 dated 12.07.2016 filed by the petitioners and accordingly directs that the respective part time services rendered by the petitioners Tvl.G.Ponnan, V.Vembulu, E.Arumugam, P.Alagarsamy, K.Pandi, R.Rajangam, V.Gurusamy and P.Thirugnanam prior to 01.06.1995 be taken into account for their pension calculation, and the pension may be granted to them from the date of issue of order as a special case, subject to the outcome of the Review Petition to be filed by the Government in this regard."

17. From the above Government Order, it is evident that the Government wants to contend before this Court and in every forum that the Village Assistants before 01.06.1995 were in part time service and that therefore, their services upto 01.06.1995 cannot be taken into account for qualifying service under the pension Rules applicable to them, namely, the Village Assistants Pension Rules, 1995. In para 7, the Government accepted the position that for computing length of service for retirement benefits, the service rendered by a person from the date of original appointment either temporary, officiating should be taken. However, para 8 is self-contradictory inasmuch as it suggests that all Village Assistants were engaged on part time basis. The service of Village Assistant is permanently required and it was always a full time job as held in several judgments. Despite the stand taken by the Government, the Government has implemented the order of this Court granting relief to several persons. It has been repeatedly held by this Court in number of judgments without any controversy that the services rendered by Thalayaris till their service was regularised with effect from 01.06.1995 were on permanent basis. This Court has already considered the nature of job and the work rendered by Thalayaris. It is to be noted that after the service of Thalayaris as Village Assistants with effect from 01.06.1995,



the nature of duties were defined. However, the Thalayaris who were appointed earlier on consolidated pay were also doing full time job which can never be treated as temporary or part time. Since Thalayari in those days was a key man rendering valid assistance to revenue department and officials of Revenue Department, he could never be dispensed with. When the respondents themselves have admitted Rule 4(a) of Tamil Nadu Village Assistants Pension Rules, 1995, there is no scope for confusion except the issue whether the appellant is entitled to count half of the services put in by him in the cadre of Thalayari for the period upto 31.05.1995 or the entire period of service. In such circumstances, the judgment of Hon'ble Mr.Justice S.Vaidyanathan in M.Vellaian v. Secretary to Government, Department of Revenue and others may not hold good having regard to the specific provisions of Tamil Nadu Village Assistants Pension Rules, 1995. Leave alone the provisions of the Rules which have been given effect to or interpreted in several precedents including the two judgment relied upon by the learned Single Judge in this case in several judgments of Division Bench, this Court has taken a consistent view that the petitioners are entitled to count 50% of their past service they have rendered as Thalayaris upto 31.05.1995 along with the regular service for the purpose of pension. It is admitted that the decisions of this Court by the Division Bench have been confirmed by the Hon'ble Supreme Court in several cases. It is also admitted that the Government has implemented the consistent view expressed by this Court in several individual cases. It was on account of the fact that some of the precedents and the applicable rules have not been brought forth by the Government Pleaders properly before some of the learned Judges of this Court, the issue which has been raised by the Government has been answered against the Government in several precedents and the ratio settled by this Court has been followed and implemented in several individual cases by the Government. In such circumstances, this Court is of the view that there is no scope for reference to a larger Bench and that the order impugned in W.P.(MD)No.70 of 2019 is set aside. The Writ Petition in W.P.(MD)No.70 of 2019 stands allowed in tune with the earlier precedents of this Court. The first respondent is directed to pass orders counting 50% of the services of the appellant put in by him as Thalayari for the period from 07.01.1983 to 31.05.1995 for the purpose of calculation of pension along with regular services put in by him as Village Assistant and Village Administrative Officer and to send revised pension proposals within a period of six weeks from the date of receipt of a copy of this order.

18.As a result, this Writ Appeal is allowed. No costs.

Sd/-

Assistant Registrar

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

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

3.The District Collector,
Madurai District,
Madurai.

+1 CC to Mr.S.VISVALINGAM, Advocate (SR-93665[F] dated 22/10/2019)
+1 CC to spl.GP (SR-94086[F] dated 23/10/2019)

JUDGMENT IN
W.A. (MD) No. 370 of 2019
22.10.2019

_MK (27.11.2019) 13P 6C