



WEB COPY

W.A.(MD)No.1390 / 2019 etc., batch

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

W.A. (MD)Nos.1390 to 1397 of 2019

and

C.M.P. (MD)Nos.11512 to 11514, 11516 to 11519 and 11521 of 2019

1. The State of Tamil Nadu,
Rep.By its Secretary,
Department of Revenue,
St.George Fort, Chennai.
2. The District Collector,
Tirunelveli District.
3. The Tahsildar,
Sankarankovil Taluk Office,
Tirunelveli District.

..Petitioners in all WA's

- Vs. -

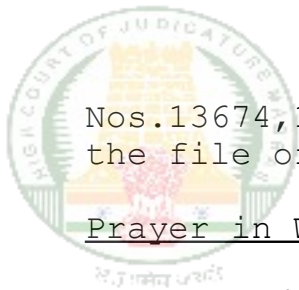
M.Chellasley	..1 st Respondent in WA(MD)No.1390/2019
A.Govindaraj	..1 st Respondent in WA(MD)No .1391/2019
L.Gurusamy	..1 st Respondent in WA(MD)No .1392/2019
G.Perumal	..1 st Respondent in WA(MD)No .1393/2019
K.Karuppan	..1 st Respondent in WA(MD)No .1394/2019
K.Pothiraj	..1 st Respondent in WA(MD)No .1395/2019
K.Rajakumaran	..1 st Respondent in WA(MD)No.1396/2019
K.Paulsamy	..1 st Respondent in WA(MD)No.1397/2019

The Principal Accountant
Gen Eral (A and E) Pension,
391, Anna Salai, Chennai.

..2nd Respondent in all WA's

Prayer in WA(MD)Nos .1390 to 1397/2019 :

Writ Appeals are filed under Clause 15 of the Letter Patent Act, to set aside the order dated 10.07.2018 made in W.P.(MD)
<https://hcservices.ecourts.gov.in/hcservices/>



Nos.13674,13678,13675, 13685,13684,13683,13681 and 13682 of 2018 on the file of this Court and allow this appeals.

Prayer in WP(MD)No . 13674/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus directing the Respondents 2 to 4 to send revised Pension Proposal to the 1st Respondent calculating half of the services put in by the Petitioner as Village Guard/Assistant from 13.04.1981 to 01.06.1995 within a specified time frame that may fixed by the Honble High Court.

Prayer in WP(MD)No . 13678/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus directing the Respondents 2 to 4 to send revise Pension Proposal to the 1st Respondent calculating half of the services put in by the Petitioner as Village Assistant from 15.05.1982 to 01.06.1995.

Prayer in WP(MD)No . 13675/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus directing the Respondents 2 to 4 to send revise Pension Proposal to the 1st Respondent calculating half of the services put in by the Petitioner as Village Assistant from 23.11.1971 to 01.06.1995.

Prayer in WP(MD)No . 13685/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus directing the Respondents 2 to 4 to send revised Pension Proposal to the 1st Respondent calculating half of the services put in by the Petitioner as Village Assistant from 28/09/1981 to 01/06/1995 within a specified time frame that may fixed by the Honble High Court.

Prayer in WP(MD)No . 13684/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus directing the Respondents 2 to 4 to send revise Pension Proposal to the 1st Respondent calculating half of the services put in by the Petitioner as Village Assistant from 24.02.1976 to 01.06.1995.

Prayer in WP(MD)No . 13683/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus directing the Respondents 2 to 4 to send revised Pension Proposal to the 1st Respondent calculating half of the services put in by the Petitioner



as Village Assistant from 31.03.1983 to 01.06.1995 within a specified time frame that may fixed by the Honble High Court.

Prayer in WP(MD)No . 13681/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus directing the Respondents 2 to 4 to send revise Pension Proposal to the 1st Respondent calculating half of the services put in by the Petitioner as Village Assistant from 06.11.1981 to 01.06.1995.

Prayer in WP(MD)No . 13682/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus directing the Respondents 2 to 4 to send revised Pension Proposal to the 1st Respondent calculating half of the services put in by the Petitioner as Village Guard/Assistant from 16/07/1985 to 01/06/1995 within a specified time frame that may fixed by the Honble High Court.

For Appellants	: Mr.A.K.Baskara Pandian Special Government Pleader
For R1	: Mr.T.S.Mohamad Mohideen
For R2	: Mr.P.Gunasekaran in all cases

JUDGMENT

[Judgment of this Court was made by **T.S.SIVAGNANAM, J.**]

Heard Mr.A.K.Baskara Pandian, learned Special Government Pleader for the appellants, Mr.T.S.Mohamad Mohideen, learned counsel for the first respondent and Mr.P.Gunasekaran, learned counsel for the second respondent. By consent on either side, these writ appeals are taken up for final disposal.

2. It is not disputed by the learned Special Government Pleader appearing for the appellants that an identical issue was considered by this Court and the writ appeals filed by the State in W.A.(MD)Nos.1254 and 1255 of 2019 have been dismissed by order dated 19.11.2019. In the said judgment we followed the earlier order of this Court in the case of C.Chellaswamy and others vs. The State of Tamil Nadu and others [W.P.(MD)No.3496 to 3498 of 2015], dated 10.07.2019. The operative portion of the judgment reads as follows:-

8. The argument of the learned counsels is by referring to the Tamil Nadu Village Servants Conduct Rules, 1983. Rule 3 of the said Rules is pressed into service to say that Village Servants being part-time Government servants, may take up part-time work or



occupation, provided that such part time work or occupation shall not interfere with their legitimate duties as village servants and the previous permission is required to be obtained from the Revenue Divisional Officer is concerned if the work or occupation is confined to a village and from the District Collector concerned, if the work or occupation extends beyond the village.

9. It is submitted that this Rule is a clear indication to show that all village servants are part time servants and that is why they have been permitted to undertake private rated employment or any other employment. At the first blush, this argument appears to be correct, but on a closer scrutiny we find otherwise. In fact, this argument was found favour by the learned Single Judge of this Court, in W.P(MD) Nos.3496 to 3498 of 2015, dated 10.07.2019 and those writ petitions were dismissed by the said order as against which those writ petitioners have preferred appeal and the appeals have been entertained. Since this ground has also been convinced, we test the correctness of the said submission in these writ appeals. The Tamil Nadu Village Servants Conduct Rules, 1983, were framed in the year 1983 and it applies to all the village servants in the State of Tamil Nadu.

10. Rule 2 of the Conduct Rules states that the Tamil Nadu Government Servants' Conduct Rules, 1960, as amended from time to time, shall apply to the village servants subject to the modification specified in Rule 3, which we referred above dealing with private trade or employment. Thus an exception has been made in respect of private trade or employment. This exception has been made by virtue of the Tamil Nadu Village Servants Conduct Rules, which has been made applicable in the Tamil Nadu Government Servants' Conduct Rules, 1960, which is only applicable to village servants except for the modification in Rule 3 of the Conduct Rules 1983. What is relevant to note is that the Government vide its order in G.O.Ms.No.141, Revenue, 21.01.1981, in exercise of the powers conferred by the provision to Article 309 of the Constitution of India has framed the Tamil Nadu Village Servants Service Rules, 1980. Those Rules apply to all village servants throughout the State.

(i) Rule 2(a) defines to mean any person as Talayari (jiyahhp), Vetti(btl;o) or Nirganti (eph;fe;jp).

(ii) Rule 3 deals with method of recruitment,



which is by direct recruitment.

(iii) Rule 5 prescribes qualifications for the Post.

(iv) Rule 6 empowers the appointing authority namely Tahsildar or the Deputy Tahsildar in independent charge to make temporary appointments where it is necessary in public interest.

(v) Rule 8 prescribes the General qualification,

(vi) Rule 9 deals with appeals against the orders of appointment.

(vii) Rule 10 deals with power of the revisional authority and

(viii) Rule 11 deals with probation.

(ix) Rule 12 provides for transfer of village servants either on administrative grounds or on request amounting to mutual transfer.

(x) Tenure of office of village servants is dealt with in Rule 13. The village servants on attaining the age of 60 years shall retire and shall not be retained in service. Proviso to Rule 13(1) gives power to the Government to retire a village servant at any time after, he completed 30 years of service, provided, he issued three months notice. Sub-Rule 2 of Rule 13 deals with the maximum period of casual leave in a year. Sub-Rule 3 of Rule 13 empowers the appointing authority to grant leave without honorarium for a specified period.

(xi) Rule 14 deals with the amount to be paid on retirement. Sub-Rule 1 of Rule 14 states that every person who ceases to hold the post of part-time village servant by reason of sub-rule (i) of rule 13, shall be paid an amount for the total service put in by him as part-time village servant and such amount shall be determined in accordance with the provisions of sub-rule 2 of Rule 14. Thus, for the first time, in Rule 14(1), the terminology part-time village servant has been mentioned and this is referable to Rule 13(1), which fixed the tenure of office and proviso under the sub-rule provides that the Government may retire a village servant before the age of 60 years ie., after he has completed 30 years of service, provided, he is put on notice. In such cases, when the power is exercised, the emoluments which are payable to such part-time village servant is to be computed in terms of sub-rule 2 of Rule 14. Similar indication is also found in the proviso to sub-rule 2 of Rule 14 and also the definition of total service under the said proviso, which states that total service shall not include any



period during which a part-time village servant was on leave either casual leave or absent without authorisation or under suspension.

(xii). Rule 15 deals with resignation which does not specify it as part-time village servants, but nomenclature is only village servants. Similarly, place of residence also refers to a village servant and the part-time village servant has not been specifically mentioned.

11. Therefore, in our considered view, the interpretation sought to be made before us by referring the Conduct Rules, 1983 and more particularly Rule 3 thereunder to state that all village servants are deemed to be part-time servants. However, this argument is not acceptable. More or less an identical issue was raised before the Honourable Division Bench in the case of the District Collector, Nagercoil and another vs. K.Raman Nair in W.A.No.16 of 2009 and the appeal filed by the State was dismissed and at this juncture, it would be relevant to take note of the following finding:

"7.The persons who were appointed as per the proceedings dated 21st July, 1975 cannot be guided pursuant to the order of regularisation contained in G.O.Ms.No.625, Revenue Department, dated 6th July, 1995. Even the said Government Order says that the services of persons appointed as part-time Village Assistants were regularised in the time scale of pay of Rs.600-10-750. If the writ petitioner was appointed on 21st July, 1975, along with others, on temporary basis in the scale of pay fixed for Village Assistants, the respondents cannot deny pensionary benefits to the writ petitioner and others who were so appointed along with him, giving reference to G.O.Ms.No.625, Revenue Department, dated 6th July, 1995, as payment of pension is guided by statutory rule. Therefore, the said Government Order 625, Revenue Department, dated 6th July, 1995 is applicable only to those who were initially appointed as part-time Village Assistants and subsequently given Full Time appointment by providing scale of pay to the post of Village Assistants at Rs.600-10-750 and not to those, like the petitioner, who were already temporary Village Assistants in the regular scale of pay."

12. Apart from the above decision, there are various other decisions of the Honourable Division Benches and Honourable Single Benches and many of which are stated to have been implemented. Therefore, in



our considered view, the decision in the case of C.Chellaswamy and others vs. State of Tamil Nadu and Others in W.P(MD)Nos.3496 to 3498 of 2015, dated 10.07.2019 , rejecting the prayer sought for in the writ petition does not lay down the correct legal principles. More so, in the light of the earlier decisions of the Honourable Division Benches as pointed out by us earlier, mere reference of Rule 3 of the Conduct Rules, which grants permission for part-time village servants to take up part-time work or occupation, will not term all the employments as part-time employments. Furthermore, the Government had taken into consideration the nature of working conditions and then took a policy decision to bring them into regular time scale of pay. Thus, considering all these factors, we are of the view that the order passed in the writ petitions does not call for any interference. In the result, these writ appeals stand dismissed. No Costs. Consequently, connected Miscellaneous Petitions are closed. "

3. The above legal position, which been laid down by the Hon'ble Division Bench in various decisions, is not disputed. Thus following the above, these writ appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

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/ /2020

Sub Assistant Registrar(CS)

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To

1. The State of Tamil Nadu,
Rep.By its Secretary,
Department of Revenue,
St.George Fort, Chennai.
2. The District Collector,
Tirunelveli District.



3. The Tahsildar,
Sankarankovil Taluk Office,
Tirunelveli District.

4. The Principal Accountant
Gen Eral (A and E) Pension,
391, Anna Salai, Chennai.

ORDER MADE IN
W.A. (MD) No.1390 of 2019 etc., batch
26.11.2019

VB (04.02.2020) 8P 5C