

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 23.07.2019****CORAM:****THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM****W.P. (MD) No.17281 of 2014****WEB COPY**

G.Selvaraj

... Petitioner

vs.

1.The State of Tamil Nadu
rep.by its Secretary to Government
Revenue Department
Fort St.George
Chennai-600 009

2.The District Collector
Kanyakumari District
Nagercoil-629 001

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of mandamus directing the respondents 1 and 2 herein to refix the pension of the petitioner by calculating half of the total honorarium service rendered by the petitioner and add it into regular service as per G.O.Ms.No.408, Finance (Pension) Department, dated 25.8.2009 by including 3% increment on the petitioner's last drawn basic pay Rs.5,280/-.

For Petitioner : Mr.S.Bharathy Kannan

For Respondents : Mr.K.Mu.Muthu

Additional Government Pleader

O R D E R

The relief sought for in the present writ petition is for a direction to the respondents to refix the pension of the writ petitioner, by calculating half of the total honorarium service rendered by him and add it with the regular service, as per G.O.Ms.No.408, Finance (Pension) Department, dated 25.08.2009, and by including 3% increment on the writ petitioner's last drawn basic pay of Rs.5,280/-.

2. The writ petitioner was appointed as Village Assistant on 26.07.1975. The order of appointment states that the writ petitioner was temporarily appointed as "Thalayari" and he will be paid at the scale of pay fixed for the "Thalayari" under the Tamil Nadu Pattern.

3. The writ petitioner was continued as a temporary employee in the post of "Thalayari". The Government issued an order in G.O. (Ms).No.625, Revenue Department, dated 06.07.1995 granting the benefit of regularization to all the part-time temporary



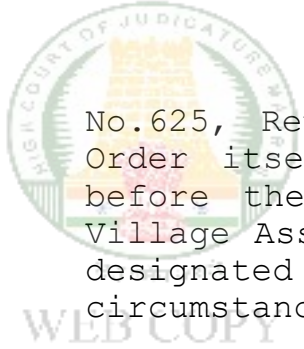
"Thalayaries" (Village Assistants). Pursuant to the Government Order issued in G.O.(Ms.) No.625, all these Village Assistants were brought under the regular establishment in the sanctioned post and accordingly, time scale of pay was granted.

4. The Government Order issued in G.O.(Ms.) No.625, dated 06.07.1995, which reveals that the Village Assistants / Thalayaries were working as part-time Village Assistants. In view of the fact that all these Village Assistants are working as part-time employees, the Government took a policy decision to bring these employees under the regular establishment in the sanctioned posts in the regular time scale of pay. Consequently, the services of the writ petitioner were regularised with effect from 01.06.1995 and accordingly, the regular time scale of pay, as applicable to the said post, was granted to the writ petitioner.

5. The claim of the writ petitioner is that he is entitled for counting of 50% services rendered by him as temporary Village Assistant from the year 1975 to 1995 with reference to the amended Rule 11(4) of the Tamil Nadu Pension Rules, 1978.

6. The learned counsel appearing for the writ petitioner made a submission that in the order of appointment issued in favour of the writ petitioner, there is no mention that the writ petitioner was appointed as a part-time employee. The order of appointment states that the writ petitioner was appointed as temporary "Thalayari" in the pay applicable to the Tamil Nadu Pattern. Therefore, for all purposes, the writ petitioner is to be treated as temporary full time employee and certainly not as a part-time employee. The learned counsel for the writ petitioner further states that even before the issuance of the Tamil Nadu Village Servants Services Rules, 1980, the writ petitioner was appointed as "Thalayari". Therefore, the said Rule cannot have any implication, so as to affect the entitlement of the writ petitioner to get the benefit of counting of 50% of the services in accordance with the amended Rule 11(4) of the Tamil Nadu Pension Rules, 1978.

7. The learned Additional Government Pleader appearing for the respondents disputed the contention raised on behalf of the writ petitioner by stating that the writ petitioner is not entitled for counting of 50% of the services rendered by him in the post of part-time Village Assistant (Thalayari). No doubt, there were no rules prior to 1980, which was specifically made available to the post of Village Servant. However, the Tamil Nadu Village Servants Services Rule 1980 came into force and all the existing Village Assistants working were brought under the rules for all purposes including initiation of disciplinary proceedings, salary and conduct rules. Therefore, pursuant to the issuance of the Tamil Nadu Village Servants Service Rules 1980, the post of Village Assistant is governed under the said Rules and the writ petitioner was serving under the Rules till his services were regularised as a full-time employee in accordance with the Government Order issued in G.O.(Ms.)



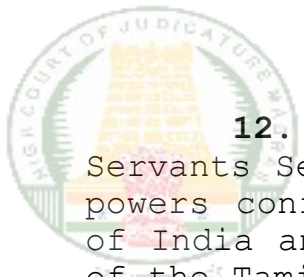
No.625, Revenue Department, dated 06.07.1995. The said Government Order itself clarifies that all these Village Assistants working before the issuance of the said Government Order were part-time Village Assistants (Thalayaries) and at no point of time, they were designated as full-time Village Assistants. Under these circumstances, the writ petition is to be rejected.

8. The learned Additional Government Pleader further brought to the notice of this Court that though the Tamil Nadu Village Servants Service Rules, 1980 was in force, in respect of the post of Village Assistant, the earlier writ petitions were decided without reference to the rules in force and the Government Pleader, who appeared also did not aware of the facts regarding the rules and they had no occasion to place this rule before the Court, which resulted in passing of orders granting the benefit of counting of 50% of the services with reference to the amended Rule 11(4) of the Tamil Nadu Pension Rules 1978. The learned Additional Government Pleader conceded the fact that they have also failed to bring it to the notice of this Court regarding the existence of the service rules applicable to the post of Village Assistant viz., The Tamil Nadu Village Servants Services Rule, 1980.

9. Under these circumstances, this Court is bound to consider the facts and circumstances as well as the service rules without reference to the earlier orders passed by this Court, wherein, the provisions of the rules were not considered and the cases were dealt with reference to the Rule 11(4) of the Tamil Nadu Pension Rules and also under the Tamil Nadu Village Service Pension Rules 1995.

10. This Court has carefully gone through the judgments produced by the learned counsel for the writ petitioner as well as the learned counsel Mr.S.Visvalingam, who assisted the Court by producing various orders and Government Orders, since he was acquainted with the facts and circumstances regarding the appointments of Village Assistants. The valuable assistance rendered by the learned counsel Mr.S.Visvalingam, is appreciated and placed on record.

11. The learned counsel appearing on behalf of the writ petitioner as well as the learned counsel, who assisted the Court produced number of orders passed by the learned single Judges as well as few orders of the Division Bench, wherein Rule 11(4) of the Tamil Nadu Pension Rules 1978 was considered. However, the very service rules applicable to the post of Village Assistant viz., the Tamil Nadu Village Servants Service Rules 1980 was neither mentioned nor considered in earlier judgments. In view of the fact that the Courts had no occasion to deal with the provisions of the Tamil Nadu Village Servants Service Rules 1980, the same prompted this Court to independently consider the facts and circumstances with reference to the rules applicable to the post of Village Assistant (Thalayari)



12. Let us now, go into the spirit of the Tamil Nadu Village Servants Service Rules 1980. The Rule was issued in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India and all other powers hereunto enabling and in supersession of the Tamil Nadu Village Officers Conduct Rules 1970 and Tamil Nadu Village Officers (Appointed under Board's Standing Orders) Service Rules 1978, the Governor of Tamil Nadu makes the rules.

13. The rules unambiguously enumerate that they were issued under Article 309 of the Constitution of India. Further, it clarifies that all the powers hereunto enabling and in supersession of the Tamil Nadu Village Officers Service Rules 1970 and Tamil Nadu Village Officers (Appointed under Board's Standing Orders) Service Rules 1978.

14. In this context, it is relevant to consider the arguments of the learned counsel for the writ petitioner that the writ petitioner was appointed prior to the year 1980 and was appointed in during the year 1975. Thus, his appointment ought to have been made under the provisions of Tamil Nadu Village Servants Service Rules 1980 and the Tamil Nadu Village Officers (Appointed under Board's Standing Orders) Service Rules 1978. Though the writ petitioner was appointed under the erstwhile rules, after the implementation of the Tamil Nadu Village Servants Service Rules 1980, all these Village Assistants were brought under the rule and the earlier rules were superseded. In supersession of the earlier rules, the existing employees working in the cadre of Village Assistants were also brought under the Tamil Nadu Village Servants Service Rules 1980 and therefore, the writ petitioner cannot say that the Tamil Nadu Village Servants Service Rules 1980 are not applicable to him.

15. Now, it is relevant to go into the veracity of the provisions of the Tamil Nadu Village Servants Service Rules 1980. Rule 1(4) of the Rules is extracted hereunder:

".....(1) (4) They shall apply to all Village Servants:-

(i) appointed on or after the coming into force of these rules;

(ii) appointed under the Madras Proprietary Estates' Village Service Act, 1894 (Madras Act II of 1894) of the Madras Hereditary Village Officers Act, 1895 (Madras Act II of 1895) and who continue to hold office by virtue of sub-Section (3) of Section 2 of the Tamil Nadu Proprietary Estates' Village Service and the Tamil Nadu Hereditary Village Officers (Repeal) Act, 1968 (Tamil Nadu Act 20 of 1968) or under

<https://hcservices.ecourts.gov.in/hcservices/> the Tamil Nadu Village Officers (Appointed under the Board's Standing Orders) Service Rules, 1978; and



(iv) under the Tamil Nadu Village Officers Services Rules, 1970 on the date of coming into force of these rules."

16. Rule 1(4) (iii) says that the Tamil Nadu Village Officers (Appointed under the Board's Standing Orders) Service Rules, 1978 and Sub-Clause (iv) stipulates that "under the Tamil Nadu Village Officers Service Rules 1970, on the date of coming into force of these rules".

17. The above said rules unambiguously portray that all the employees, who were appointed to the post of Village Assistant prior to the implementation of the Tamil Nadu Village Servants Service Rules 1980, were also brought under the rules and therefore, they cannot be dealt with the provisions of any other rules, under which they were appointed prior to the year 1980. It is further made clear that all these Village Assistants appointed either under the Tamil Nadu Village Officers (Appointed under Board's Standing Orders) Service Rules, 1978 or under the Tamil Village Officers Service Rules 1970 were also brought under the provisions of the Tamil Nadu Village Servants Service Rules 1980.

18. This being the factum, this Court is of the considered opinion that the very stand taken by the learned counsel for the writ petitioner that the rules of the year 1980, are not applicable to the writ petitioner is of no avail to the writ petitioner. The writ petitioner, after implementation of the Tamil Nadu Village Servants Service Rules 1980, was brought under the said rules by virtue of Rule 1(4)(iii) or Sub-clause (iv).

Rule 3 speaks about method of recruitment.

Rule 4 denotes appointing authority.

Rule 5 enumerates qualification.

Rule 6 deals about temporary appointments.

Rule 9 speaks about appeals against the orders of appointment.

Rule 10 provides revision.

Rule 11 is relevant which deals with probation.

Rule 11 stipulates that "there shall be no probation for persons appointed to the post of Village Servant."

Rule 14 states amount to be paid on retirement. Accordingly, every person, who ceases to hold the post of part-time village servant by reason of sub-rule (1) 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 provision of sub-rule(2).

Rule 14(2)(c) defines "total service shall not include any period during which a part-time Village Servant was on leave other than causal



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leave, or absent without authorisation or under suspension."

Sub-clause (4) deals with the determination of amount by competent authority. It states that "on receipt of the report from the Tahsildar, the competent authority shall determine the amount payable under this rule after taking into account, the total service put in by the part-time Village Servant."

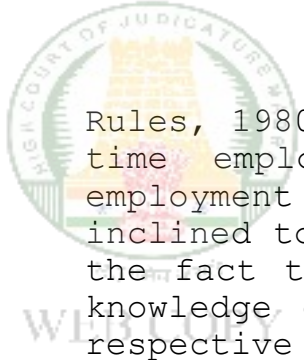
19. In respect of these part-time village servants, the Tamil Nadu Village Servant Classification Control and Appeal Rules 1983 were also issued by the Government in G.O.(Ms.) No.1131 Revenue Department, dated 24.06.1983. Importantly, the Tamil Nadu Village Servants Conduct Rules, 1983, were issued separately. The said Conduct Rules also reveal that the Village Assistant being a part-time Government Servant, may take up part-time work or occupation. Rule 3 stipulates that these part-time Village Assistants can undertake private occupation or part-time work.

20. Thus, the Conduct Rules itself reveal that the part-time Village Assistants are entitled to accept any other part-time job, private work or occupation. However, such part-time work or occupation shall not interfere with their legitimate duty as village servant and a previous permission is also to be obtained.

21. In these context, it is relevant to consider that the permission to accept the part-time employment was granted under the conduct rules in view of the fact that the appointment of the Village Assistant is on part-time basis.

22. The cogent and continuous reading of the entire provisions of the Tamil Nadu Village Servants Service Rule 1980 as well as the conduct rules reveals that appointments to the post of Village Assistant are part-time in nature. It is made clear that the part-time Village Assistants are entitled to accept the private employment on part-time basis or private occupation with the prior permission of the authorities concerned. The provisions of the service rules also state that they were considered as part-time Village Assistants for the settlement of terminal benefits on attaining the age of superannuation. This being the provisions of the rules, this Court is of the considered opinion that the very ground raised by the writ petitioner that he is a full-time employee cannot be accepted at all.

23. With reference to the earlier order of this Court, at no point of time, the High Court had an occasion to interpret the provisions of the Tamil Nadu Village Servants Service Rules 1980 as well as the provisions of the Tamil Nadu Village Servants Conduct Rules 1983. Both the rules categorically enumerate that even the Village Assistants appointed prior to the year 1980 were brought under the provisions of Rule the Tamil Nadu Village Servants Service



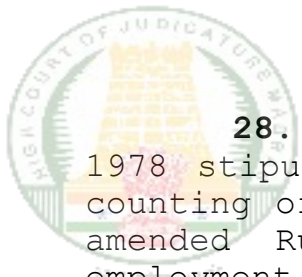
Rules, 1980, which state that all these Village Assistants are part-time employees and they are entitled to accept the private employment on part-time basis. Therefore, this Court is not inclined to follow the earlier judgment of this Court and in view of the fact that the provisions of the rules were not brought to the knowledge of this Court by the learned counsel appearing for the respective parties and the Courts had no occasion to deal with the rules. Thus, this Court is inclined to consider the writ petition independently, on merits and with reference to the service rules, which all are applicable to the post of Village Assistant.

24. The Honourable Supreme Court reiterates in many judgments that if any order or judgment, which was delivered without considering the appropriate legal provisions with reference to the statute or rules, it is not necessary to mention that the same should be followed for the purpose of granting the relief. In other words, the Government Orders passed based on the orders of this Court, in such circumstances cannot be construed as legal precedents. The legal precedent is one, where all the provisions of law as well as the rules applicable were considered and an order is passed. Thus, those judgments, wherein these service rules applicable to the post of Village Assistant were not considered, cannot be followed as precedents so also the Government Orders granting the benefit to few individuals cannot be cited as a precedent for passing further orders.

25. Even in case of mistake, the Courts are not supposed to commit the same mistake repeatedly. Once it is brought to the notice of this Court that the provision of the rules had not been adjudicated by the Court, then it is duty mandatory on the part of the Court to look into the rules applicable and take a decision on merits and in accordance with law.

26. The learned Additional Government Pleader fairly made a submission that they are not aware of this rules on earlier occasion and they could not defend the case with reference to the provisions of the Tamil Nadu Village Servants Service Rules 1980. This being the fair submission made, this Court is of the considered opinion that the earlier order passed cannot be followed in view of the fact that the rules as applicable to the post of Village Assistant were not brought to the notice of this Court and thus, this Court is bound to consider the provisions of the rules.

27. As far as the present writ petition is concerned, the writ petitioner was appointed in the year 1975. He was brought under the provisions of the Tamil Nadu Servants Service Rules, 1980, in the year 1980. The writ petitioner was brought under the regular establishment with effect from 01.06.1995 and his services were also regularised. Therefore, he is entitled to get the terminal and pensionary benefits with effect from the date of his regularization.



28. The amended Rule 11(4) of the Tamil Nadu Pension Rules, 1978 stipulates that the part-time employees are not entitled for counting of 50% of the service rendered as part-time employees. The amended Rule 11(4) is applicable to the full-time temporary employment and not for part-time employees. This being the purport of the amended Rule 11(4) of the Tamil Nadu Pension Rules, the writ petitioner is not entitled to avail the benefit of counting of 50% of the services based on the Rule 11(4) of the Tamil Nadu Pension Rules 1978. The pensionary and terminal benefits were already settled in favour of the writ petitioner with effect from the date of his regularization and in consonance with the service rules in force and in accordance with the Tamil Nadu Pension Rules, 1978.

29. Thus, the writ petitioner has not established that he is not a part-time employee. Contrarily, the learned Additional Government Pleader is able to establish before this Court that the post of Village Assistant was a part-time employment and therefore, the Village Assistants are not entitled to count 50% of the services for the purpose of calculating the qualifying service with reference to Rule 11(4) of the Tamil Nadu Pension Rules 1978.

30. In view of the above observations, the writ petition stands dismissed. No costs.

Sd/-

Assistant Registrar (AD-I)

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Sub Assistant Registrar(CS)

To

1.The Secretary to Government,
Revenue Department,
State of Tamil Nadu,
Fort St.George, Chennai-600 009.

2.The District Collector,
Kanyakumari District,
Nagercoil-629 001.

+1 CC to SPL GP (SR-77270[F] dated 24/07/2019)

W.P. (MD) No.17281 of 2014
23.07.2019