BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:**10.07.2020**
CORAM
**THE HON'BLE MR.JUSTICE R.SURESH KUMAR**

W.P.(MD)Nos.3319 and 20411 of 2019

(Through Video conferencing)

R.Ramaiah ...Petitioner in W.P.(MD) No.3319/2019

C.Durairaju ...Petitioner in W.P.(MD) No.20411/2019

-Vs-

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

2.The Commissioner of Revenue Administration,
Ezhilagam, Chepauk,
Chennai - 600 005. ... Respondents 1 & 2 in both petitions

3.The District Collector,
Virudhunagar District,
Virudhunagar. ... R3 in W.P.3319/2019

4.The District Collector,
Thanjavur District,
Thanjavur. ...R3 in W.P.20411/2019

Prayer: Writ Petitions - filed under Article 226 of Constitution of India, to issue a writ of Mandamus, directing the 1st respondent i.e. the Principal Secretary to Government, Revenue Department, Secretariat, Chennai to pass orders counting 50% of services of the petitioners put in by the petitioners as Thalayari for the period from 06.04.1986 to 31.05.1985 and 22.05.1985 to 31.05.1995 respectively for the purpose of calculation of pension along with regular services put in by them as Village Assistant and arrange to send revised pension proposals within a specified time frame, that may be fixed by this Court.

(In Both Writ Petitions)

For Petitioner : Mr.S.Visvalingam
For Respondents : Mr.K.Mu.Muthu, AGP

**COMMON ORDER**

The prayer in these writ petitions is for a writ of Mandamus, directing the 1st respondent i.e. the Principal Secretary to Government, Revenue Department, Secretariat, Chennai to pass orders counting 50% of services of the petitioners put in by the petitioners as Thalayari for the period from 06.04.1986 to 31.05.1985 and 22.05.1985 to 31.05.1995 respectively for the purpose of calculation of pension along with regular services put in by them as Village Assistant and arrange to send revised pension proposals within a specified time frame, that may be fixed by this Court.

2.The petitioners' grievance is that, they were initially appointed prior to 1995 as Village Assistant/Thalayari on a consolidated pay and they have been working in that capacity till 01.06.1995, the date on which, all such persons, who were worked on consolidated pay were brought under regular time scale of pay on regular basis. After some years, on superannuation, they retired from service and they have been given pension also and they are continuing to receive pension. In this context, the petitioners' grievance is that, while calculating pensionary service, the respondents taken into account only the service rendered by these petitioners from 01.06.1995 and service rendered by them prior to 01.06.1995 were not taken into account. In this regard, similarly placed persons approached this Court. Those writ petitions along with some other writ petitions were heard together and decided by a common order of this Court in W.P.(MD) Nos.6905 to 6908 of 2015 dated 12.07.2016 by a learned Judge, where, after considering the merits of the case, the learned Judge allowed all those writ petitions, by giving directions to the respondents to extend the benefit of G.O.Ms.No.173 in favour of the petitioners therein and such exercise shall be undertaken within a period of eight weeks from the date of receipt of a copy of order passed in those writ petitions.

3.In this context, it is a further grievance of the petitioners that, as against the said order passed by the learned Judge in W.P.(MD) Nos.6905 to 6907 of 2015, intra Court appeals were preferred by the respondents in W.A.(MD) Nos.1048 to 1050 of 2017. By a separate order, the Division Bench of this Court on 10.08.2017 dismissed all those writ appeals. By thus, orders of the learned Judge made on 12.07.2016 has been confirmed.

4.In this context, the Government has issued a Government Order in G.O.Ms.No.473, Revenue and Disaster Management Department, Service Wing Section dated 03.12.2018, wherein, after having considered the said order passed by the Writ Court as well as the order passed in intra Court appeal by the Division Bench of this Court, has decided to accept the import of the order and passed the aforesaid Government Order. The operative portion of the Government Order in G.O.Ms.No.473 is quoted hereunder for easy reference.

> “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."

5.Despite, those orders having been passed are confirmed by the Division Bench, import of the said order so far not been implemented by the respondents, especially the 2nd respondent. That appears to be the present grievance of the petitioners.

6.Heard the learned counsel appearing for the petitioners as well as the learned Additional Government Pleader appearing for the respondents.

7.Having heard the submissions made by both sides and also having gone through the materials placed before this Court, this Court is inclined to accept the plea raised by the petitioners, because in a related writ petition filed by similarly placed persons like the petitioner, today, this Court passed the following order:

> "11.When the Government issued Government Order pursuant to the order passed by the Court of law, the implementing authority must see only the import of the Government order and the implementing authority need not ask for any clarification as to what order has been originally passed by the Court of law, which directing the Government to take a decision. Such kind of roving enquiry on the part of the 2nd respondent may not be necessitated as the Government is the employer, petitioners are the employees. Therefore, service benefits given to the employees are to be decided only by the Government, of course, within the framework of law and once, the Government decided in this regard and passed a Government order, which is a statutory order passed by the Government by exercising its executive power conferred on them under Article 162 of Constitution of India, therefore, the validity of the import of such Government Order/executive instructions in exercise of the executive power under Article 162 of Constitution of India issued by the State Government cannot be questioned by any other authority as it is the wisdom of the State Government to pass any such orders by taking a policy decision either on their own or towards implementing orders passed by the Court of law.

12.In that view of the matter, this Court finds force in the contention raised by the petitioners herein and therefore, this Court is inclined to dispose of this writ petition with the following direction:

"The 2nd respondent shall act upon as per G.O.Ms.No.473 dated 03.12.2018 and implement the import of such Government Order, especially in the context of the operative portion of the Government Order at para 9 of the Government Order, which has been extracted herein above. Accordingly, the 2nd respondent shall calculate the period of 50% of the service rendered by the petitioners prior to 01.06.1995 for the purpose of pensionary benefits and accordingly, shall calculate the pension payable to the petitioners and pay the same with arrears and shall continue to pay the revised pension to the petitioners. Needful as indicated above shall be undertaken by the respondents, especially the 2nd respondent, within a period of two months from the date of receipt of a copy of this order.

13.Now, the learned counsel appearing for the 2nd respondent pointed out that the proposal has been returned to the concerned Revenue Divisional Officers for necessary clarification, but, so far, the concerned Revenue Divisional Officers have not clarified the position. In view of the above discussion, such clarification shall also be given by the Revenue Divisional Officers through the District Collectors concerned to the 2nd respondent and on receipt of the same, the 2nd respondent should act upon as directed above.

14.Accordingly, this writ petition is ordered to the terms indicated above. No costs."

8.In view of the above, the following orders are passed in these writ petitions:

"the respondents, especially, the respective 3rd respondent i.e., the District Collector concerned shall forward the proposal to the Accountant General's Office through the Government for calculating the 50% of the earlier service rendered by these petitioners prior to 01.06.1995 for the purpose calculating the total service for pensionary service and accordingly, on the receipt of the proposal from the 3rd respondent, the Government shall send communication to the Accountant General of Tamil Nadu, to implement the orders. Needful as indicated above shall be undertaken by the 3rd respondent within a period of one month from the date of receipt of a copy of this order. Thereafter, the Government shall forward the decision to implement the order to the Accountant General, within a period of two months thereafter and on receipt of the same, the Accountant General shall pass necessary orders, pursuant to the directive issued in this regard by the Government towards implementing the decision of the Government to calculate 50% of the earlier service of the petitioners prior to 01.06.1995 as total pensionary service for the purpose of pension, accordingly, revise the pension and pay the same to the respective petitioners."

9.With the above terms, these writ petitions are allowed. No costs.

Sd/-

Assistant Registrar (CS II)

// True Copy //

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Sub Assistant Registrar(CS)

Arul

**Note:** In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

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

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

3.The District Collector,
Virudhunagar District,
Virudhunagar.

4.The District Collector,
Thanjavur District,
Thanjavur.

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**KK(06.08.2020) 5P 5C**