



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD) No.12677 & 12679 of 2020

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K.Gopalan ... Petitioner in W.P.(MD)No.12677/2020
P.S.Durairajan ... Petitioner in W.P.(MD)No.12679/2020

Vs.

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

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

3.The District Collector,
Thanjavur District,
Thanjavur.

... Respondents in both petitions

COMMON PRAYER : Writ Petitions are filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the 1st respondent i.e. the Additional Chief Secretary to Government, Revenue Department, Secretariat, Chennai to pass orders counting 50% of services of the respective petitioners as Thalayari for the period from 18.11.1989 to 31.05.1995 and 31.10.1989 to 31.05.1995 respectively for the purpose of calculation of pension along with regular services put in by them as Village Assistants and arrange to send revised pension proposals within a specified time frame, that may be fixed by this Court.

For Petitioner : Mr.S.Viswalingam

For Respondents : Mrs.J.Padmavathi Devi,
Spl.Govt.Pleader

O R D E R

The prayer sought for in this writ petition is for a writ of Mandamus, directing the 1st respondent i.e. the Additional Secretary to Government, Revenue Department, Secretariat, Chennai to pass orders counting 50% of services of the respective petitioners as Thalayari for the period from 18.11.1989 to 31.05.1995 and 31.10.1989 to 31.05.1995 respectively for the purpose of calculation of pension along with regular services put in by them as Village Assistants and arrange to send revised pension proposals within a



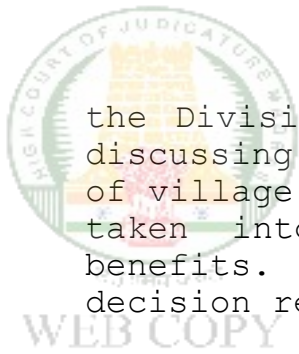
specified time frame, that may be fixed by this Court.

2.The petitioners were originally appointed as Permanent Thalayari i.e. Village Assistants in the year 1989 i.e. 18.11.1989 and 31.10.1989 respectively. For several years, this kind of village assistants were working on consolidated pay throughout Tamil Nadu and sometime in 1995, the Government decided to bring them under regular time scale of pay with effect from 01.06.1995. Thereafter, these village assistants were working under regular time scale of pay and on superannuation, they are retiring. After retirement, they have been receiving pension only based on the time scale of pay they started receiving from 01.06.1995 till the superannuating period and in this regard, their past service prior to 01.06.1995 was not taken into account.

3.In this regard, number of writ petitions have been filed before this Court, where, orders were passed directing the Government to calculate the service rendered by all this kind of village assistants prior to 01.06.1995 for the purpose of calculating their total service for pensionary benefits alone. Even in the year 2014, this kind of orders were passed and direction were given by this Court. Pursuant to one order of this nature, the Government having accepted the same, implemented it by issuing G.O.Ms.No.173, Revenue Department dated 29.05.2014, wherein, at para 10 in the operative portion, the following order has been passed:

"10.The Government, after careful examination of the above case and decided to compliance the order passed by the Hon'ble Madurai Bench of Madras High Court dated 6.3.2009 in WP(MD) Nos.11094 to 11101/2008 filed by Tvl.K.Ponnugurusamy and 7 others Village Assistants (retired) and accordingly directed that the petitioners Tvl's K.Ponnugurusamy, K.Muthiah, V.Chinna Mariappan, R.Muthiah, S.Rasu Thevar, S.Chakkan, G.Ramar and K.Subbaiah, Village Assistants (retired) be paid pension taking into the account of service rendered by them prior to 1.6.1995 from the date of issue of order as a special case, this case will not be taken as a precedent to any other case in future."

4.Even thereafter, several such writ petitions were filed almost in all the years. In the year 2016, a batch of writ petitions were filed, some orders for calculating the previous services for the purpose of pensionary benefits were passed and directed to be considered and some of the orders passed by the single Judge Benches were taken up by way of Intra Court appeal by the Government and the Division Bench has also having gone through the merits of the issue was pleased to confirm the decision rendered by the learned single Judge Benches. One such Division Bench order, which is a latest decision, was made in W.A.(MD) N.370 of 2019 in the matter of **K.Velmayil Vs. The secretary to Government, Revenue Department, Secretariat, Chennai - 600 009 and two others**, where,



the Division Bench of this Court, after having taken the issue by discussing it elaborately, has ultimately concluded that this kind of village assistants have served prior to 01.06.1995, which also be taken into account for the purpose of calculating pensionary benefits. The operative portion of the order of the Division Bench decision referred to above is usefully referred to herein as under:

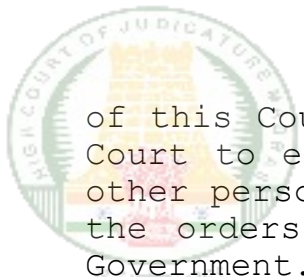
"17.From the above Government order, it is evident that the Government wants to contend before this Court and in every forum that the village Assistants before 01.06.1995 were in part time service and that therefore, the services upto 01.06.1995 cannot be taken into account for qualifying service under 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 was regularised 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 Honourable Mr.Justice S.Vaidyanathan in M.Vellaian Vs. 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. "

5.Following this decision of the Division Bench of this Court, number of orders have been passed by the learned single Judges even thereafter, during the year 2018 and 2019. This is one of such case, where the petitioners were appointed as Village Assistant/Thalayari on 18.11.1989 and 31.10.1989 respectively, they had been continuously working on consolidated pay till they were brought under the regular time scale of pay from 01.06.1995 and thereafter, after having served for several years, they retired from service on superannuation. They are also getting pension only for the period calculated from 01.06.1995 till they superannuated, thereby, their earlier service from 18.11.1989 to 31.05.1995 and 31.10.1989 to 31.05.1995 respectively has not been taken into account. Therefore, the petitioners are before this Court.

6.I have considered the submission made by the learned counsel appearing for the petitioners, who, relying on the earlier decisions



of this Court as has been discussed above, seeks indulgence of this Court to extend the benefit to the petitioners as similarly placed other persons have already approached this Court and got orders and the orders of this Court have also been implemented by the State Government.

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7.However, Mrs.J.Padmavathi Devi, learned Special Government Pleader appearing for the respondents would submit that though the petitioners were appointed on 18.11.1989 and 31.10.1989 as Thalayari i.e. Village Assistant, they were only a part time employees and they were brought under regular time scale of pay only from 01.06.1995 and prior to the said date, what service they rendered was only a part time service, therefore, the said service cannot be taken into account for the purpose of pensionary benefits.

8.The said objection made by the learned Government Pleader appearing for the respondents cannot be countenanced , because, these issues have already been heard and decided in a number of decisions as has been referred to above and therefore, such an objection can no longer be a valid reason opposing the prayer sought for herein.

9.As has been rightly pointed by the learned counsel appearing for the petitioners, the issue raised in these writ petitions are no more res-integra as in many number of cases, the issue has repeatedly been decided. In this context, a case, where, the State preferred appeal in W.A.(MD) No.517 of 2020, which was also decided by a Division Bench of this Court on 13.08.2020, where the Division Bench has passed the following order:

"8. During the course of arguments, the attention of this Court was also invited to the decision rendered by a Full Bench of this Court in **Government of Tamil Nadu, Represented by its Secretary to Government, Public Works Department and others v. R.Kaliyamoorthy**, reported in (2019) 6 CTC 705, wherein, one of the issues is relating to the counting of 50% of the service for the purpose of terminal benefits, in the light of the proviso to Rule 2 of the Tamil Nadu Pension Rules, 1978 and in paragraph 45, answered the references as follows:

"45. In the light of the above, we answer the reference as follows:-

i) Those who are freshly appointed on or after 01.04.2003 are not entitled to pension in view of proviso to Rule 2 of Tamil Nadu Pension Rules, 1978 inserted by G.O.Ms.No.259 dated 06.08.2003.

(ii) Those government servants/employees appointed prior to 01.04.2003 whether on temporary or permanent basis in terms of Rule



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10 (a) (i) of Tamil Nadu State and Subordinate Service Rules will be entitled to get pension as per the Tamil Nadu Pension Rules, 1978.

(iii) In case, a government employee/servant had also rendered service in Non-Provincialised service, or on consolidated pay or on honorarium or daily wage basis and if such services were regularised before 01.04.2003, half of such service rendered shall be counted for the purpose of conferment of pensionary benefits.

(iv) Those government servants who were appointed in the aforesaid four categories before the cut off date and later appointed under Rule 10 (a) (i) of Tamil Nadu State and Subordinate Service Rules before 01.04.2003 and absorbed into regular service after 01.04.2003 will not be entitled to count half of their past service for the purpose of determination of qualifying service for pension.

(v) Those government servants who were appointed in the aforesaid four categories before 01.04.2003 but were absorbed in regular service after 01.04.2003 will not be entitled to count half of their past service for the purpose of determination of qualifying service for pension."

9. No doubt, the writ petitioner had approached the Court with a few months delay and it is not in dispute that but for the fixation of cut-off date, he would have been entitled to the benefits of service rendered by him as a Double Part Time Vocational Instructor. The learned Judge in the impugned common order had also referred to the above cited common judgment dated 06.04.2018, made in W.A.No.882 of 2017 etc., and having noted the fact that persons similarly placed have been granted the benefits and also taking note of various pronouncements of the Hon'ble Supreme Court of India, had held that the writ petitioners are entitled to such benefits.

10. Admittedly, the fact of the case would disclose that the petitioner had approached the Court with a delay of three months and in the light of answering of the references in paragraph No.45 of the above cited Full Bench judgment **[(2019) 6 CTC 705]** (supra), this Court finds no merit in this Writ Appeal. However, it is made clear that if at all any future claim is made by any persons who are similarly placed like that of



the writ petitioners who had worked as Single/Double Part Time Vocational Instructors, they are not entitled for any interest on the settlement of the retiral/terminal benefits."

10. In view of the above, this Court has no hesitation to hold that the petitioners are entitled to with the relief they sought for and by following the earlier decisions of this court including the Division Bench decision referred to above, I am inclined to pass the following orders:

"The respondents are directed to pass necessary orders on the request of the petitioners by calculating the earlier service rendered by the petitioners from the date on appointment i.e. 18.11.1989 to 31.05.1995 and 31.10.1989 to 31.05.1995 respectively, the date on which, the petitioners were brought in regular time scale of pay and the said past service prior to 01.06.1995 be added for the purpose of calculating the pension payable to the petitioner. Accordingly, the pensionary benefits can be modified and the revised pension can be calculated and be paid to the petitioners with arrears and shall continue to pay the revised pension to the petitioners till their life time. The aforesaid exercise shall be undertaken by the respondents within a period of two months from the date of receipt of a copy of this order."

11. With these directions, these writ petitions are disposed of. No costs.

Sd/-

Assistant Registrar (Crl.Side)

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/ /2021

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 Additional Chief Secretary
to Government,
Revenue Department,
Secretariat, Chennai - 600 009.

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



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

3.The District Collector,
Thanjavur District,
Thanjavur.

Order made in
W.P. (MD) No.12677 & 12679 of 2020

Dated:
25.09.2020

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AP (20/01/2021) 8P 4C