



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :04.12.2020

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THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P. (MD) No.17326 of 2020

and

W.M.P. (MD) No.14494 of 2020

S.Karuppasamy

...Petitioner

Vs

1.The Secretary to Government,
State of Tamilnadu,
Revenue Department,
Secretariat,
Chennai.

2.The Accountant General (A&E),
Tamilnadu,
361, Anna Salai,
Chennai 18.

3.The District Collector,
Tenkasi.

4.The Revenue Divisional Officer,
Tenkasi.

5.The Tahsildar,
Sankaran Kovil Taluk Office,
Tenkasi District.

6.The Tahsildar,
Thiruvankadam Taluk Office,
Tenkasi District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the proposal of 6th respondent in Na.Ka.A1/183/2020 dated 17.06.2020 and the subsequent order of return passed by 2nd respondent through his proceedings No.P26/3/12630027/ADK/218 dated 16.09.2020 and quash the same and further direct the 6th respondent to send fresh pension proposal to the 2nd respondent taking 50% of the service by the petitioner



rendered by the petitioner as Village Assistant from 31.03.1984 to 31.05.1995 (5 years 7 months) along with the service rendered in time scale of pay as Village Assistant 01.06.1995 to 22.09.2015 (20 years 3 months 22 days) with the service rendered as Village Administrative Officer from 23.09.2015 to 31.03.2020 (4 years 6 months and 8 days), totally 30 years 5 months as qualifying pensionable period and further sanction pension, within the time frame fixed by this Court.

For Petitioner : Mr.T.S.Mohamed Mohideen
For R1 & R3 to R6 : Mr.M.Jeyakumar
Additional Government Pleader
For R2 : Mrs.S.Mahalakshmi

ORDER

Challenging the impugned proposal sent by the 6th respondent in Na.Ka.A1/183/2020, dated 17.06.2020 and the subsequent order of return passed by the 2nd respondent, dated 16.09.2020 in proceedings No.P26/3/12630027/ADK/218 and for a direction to the 6th respondent to send the pension proposal afresh to the 2nd respondent by taking 50% of the service rendered by the petitioner as Village Assistant from 31.03.1984 to 31.05.1995 (5 years 7 months) along with the service rendered in time scale of pay as Village Assistant from 01.06.1995 to 22.09.2015 (20 years 3 months 22 days) with the service rendered as Village Administrative Officer from 23.09.2015 to 31.03.2020 (4 years 6 months and 8 days), in total, 30 years 5 months, the present writ petition has been filed.

2.The case of the petitioner, in brief, is as follows:-

2.1.According to the petitioner, though he was initially appointed as Thalayari in the permanent category, vide order dated 31.03.1984, he was paid with only with consolidate pay and was working as full time Thalayari. As per G.O.Ms.No.625, Revenue Department, dated 06.07.1995, the petitioner as well as the similarly placed persons were brought under the regular time scale of pay on 06.07.1995 and the same has also been super recorded in his service record. On attaining the age of superannuation, the petitioner retired from service on 31.03.2020 and at the time of retirement, he was working as Village Administrative Officer within the jurisdiction of the 6th respondent.

2.2.Prior to the petitioner's retirement, on 07.03.2020, the 6th respondent has sent a proposal, vide proceedings No.A1/183/2020 to the 2nd respondent with regard to the petitioner's pension and in the aforesaid proposal, the 6th respondent calculated the



petitioner's qualifying service as 24 years and 10 months, which reads as follows:-

- "a) As Village Assistant in time scale of pay, from 01.06.1995 to 22.09.2015 (20 years 3months and 22 days).
b) As Village Administrative Officer from 23.09.2015 to 31.03.2020 (4 years 6 months and 8 days)."

2.3.The 6th respondent, according to the petitioner, has wrongly calculated the petitioner's service as stated above and sent a proposal to the 2nd respondent on 07.03.2020 and again on 17.06.2020, but the petitioner's qualified service for pension comes around 30 years and 5 months. The calculation chart, as per the petitioner, is as under:-

The employment details	From	To	Total days of work			Eligible Pension period		
			Year	Month	Day	Year	Month	Day
Permanent Talayari appointment	31.03.1984	31.05.1995	11	07	01	05	07	00
Village Assistant Time scale of pay	01.06.1995	22.09.2015	20	03	22	20	03	22
VAO	23.09.2015	31.03.2020	04	06	08	04	06	08
Total						30	05	00

2.4.After the receipt of the impugned proposal, dated 17.06.2020 sent by the 6th respondent, the 2nd respondent passed the impugned order, dated 16.09.2020, determining the petitioner's service period as 14 years 8 months and 4 days and not 24 years and 10 months as stated by the 6th respondent in his proposal. Hence, the petitioner is before this Court.

3.The learned counsel appearing for the petitioner would submit that the petitioner initially worked as Thalayari from 31.03.1984 to 31.05.1995 ie., for a period of 11 years 2 months and from 01.06.1995 to 22.09.2015, the petitioner worked as Village Assistant, ie., for a period of 20 years 3 months and 22 days. Subsequently, the petitioner was promoted to the post of Village Administrative Officer and from 23.09.2015 to 31.03.2020 ie., for a period of 4 years 6 months and 8 days, he worked as VAO. He would further submit that the petitioner is entitled for pension for the 50% service rendered by him as Thalayari and the entire service period rendered by him as Village Assistant and VAO and the same should be calculated as pensionable service period for pension.



4.The learned counsel would further submit that ignoring the petitioner's 50% service period, during which period, he worked as Thalaiyari, the 6th respondent sent a proposal, dated 17.06.2020 to the 2nd respondent for pension to the petitioner, determining the petitioner's service period as 24 years and 10 months. The learned counsel therefore would submit that the petitioner's pensionable service period should be calculated as 30 years and 5 months instead of 14 years 8 months and 4 days as stated by the 2nd respondent.

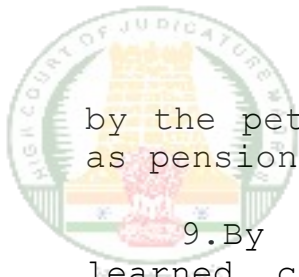
5.The learned counsel in support of his contention has relied upon the judgment of this Court made in W.A.(MD) No.370 of 2019, dated 22.10.2019, wherein, this Court has held as follows:-

".....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."

6.By referring the aforesaid judgment, the learned counsel appearing for the petitioner would submit that the impugned proposal as well as the impugned order passed by the respondents 6 and 2 respectively dated 17.06.2020 and 16.09.2020 are liable to be set aside.

7.On the other hand, the learned counsel appearing for the 2nd respondent would submit that the petitioner had put in regular service under a special time scale of pay for 20 years and 3 months and 20 days in the post of Village Assistant and as per the above clarification, 50% of the service in the post of Village Assistant, which is 10 years 1 month and 10 days, can be added as qualifying service to the service rendered in the promotion post of Village Administrative Officer for pensionary benefits.

8.The learned counsel in support of her contention, relied on the clarification letter, dated 20.12.2018, issued by the 1st respondent, wherein, it had been stated that half of the qualifying services rendered in the post of full time Village Assistant with effect from 01.06.1995, which is covered under Tamil Nadu Village Assistants Pension Rules, 1995, may be counted when such service is followed by regular Village Administrative Officer Service, by promotion prior to 01.04.2003 for the purpose of pensionary benefits subject to the conditions laid down in Rule 11 (3) of Tamilnadu Pension Rules, 1978. The learned counsel therefore would submit that the 50% of the service period rendered



by the petitioner as Thalayari should be taken into consideration as pensionable service period for pension.

9.By referring the aforesaid letter, dated 20.12.2018, the learned counsel would submit that the impugned order, dated 16.09.2020 made by the 2nd respondent is not improper.

10.Heard the learned counsel on either side and perused the materials available on record.

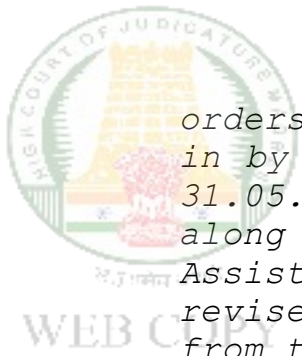
11.On 31.03.1984, the petitioner was initially appointed as Village Assistant on consolidate pay and subsequently, on 06.07.1995, his service was regularized under time scale of pay and the same was recorded in his service record. Thereafter, the petitioner was working as full time Village Assistant up to 22.09.2015 under the regular time scale of pay. Subsequently, the petitioner was promoted to the post of Village Administrative Officer and from 23.09.2015 to 31.03.2020, ie., for a period of 4 years 6 months and 8 days, he worked as VAO.

12.Now the issue involved in the present writ petition is whether the petitioner's 50% service period as Thalayari ie., for a period of 5 years and 7 months can be taken into consideration for the purpose of determining the pension as pensionable service period. The issue is no more *res integra*. The issue involved in the present writ petition is squarely covered by the judgment of this Court made in W.A.(MD) No.370 of 2019, wherein, it had been stated as follows:-

"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 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 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."

13. On a perusal of the aforesaid judgment, it appears that the persons are entitled to count 50% of the service rendered by them as Thalayari along with the regular service for pension. In the case on hand, the petitioner was working as Thalayari on consolidate pay from 31.03.1984 to 31.05.1995 and his service was regularized only with effect from 01.06.1995 as Village Assistant under the time scale of pay. Therefore, this Court is of the view that the petitioner's 50% service period as Thalayari from 31.03.1984 to 31.05.1995 and petitioner's 100% service period as Village Assistant from 01.06.1995 to 22.09.2015 should be taken into consideration as pensionable service period for pension.

14. In view of the foregoing discussions and in view of the law settled by this Court in W.A.(MD) No.370 of 2019, the impugned proposal of the 6th respondent in Na.Ka.A1/183/2020 dated 17.06.2020 and the subsequent order passed by 2nd respondent in proceedings No.P26/3/12630027/ADK/218 dated 16.09.2020, are hereby quashed with the following directions:-

i) the 6th respondent is directed to send a proposal afresh with regard to the petitioner's pension to the 2nd respondent, by taking into consideration of the observations made in this writ petition and in the light of the law settled by this Court in W.A.(MD) No.370 of 2019, within a period of four weeks from the date of receipt of a copy of this order; and

ii) on receipt of such proposal, which has to be sent by the 6th respondent, the 2nd respondent is directed to consider the same and pass appropriate orders, in accordance with law, within a period of eight weeks therefrom;

15. In the result, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (RECORDS)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)



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 Secretary to Government,
State of Tamilnadu,
Revenue Department,
Secretariat,
Chennai.
- 2.The District Collector,
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- 5.The Tahsildar,
Thiruvenkadam Taluk Office,
Tenkasi District.

+1 cc to Mr.T.S.Mohamed Mohideen , Advocate SR.No.24192

+1 cc to The Special Government Pleader Sr.No.24382

W.P. (MD) No.17326 of 2020
04.12.2020

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