



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **13.10.2020**

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THE HONOURABLE MR.JUSTICE **KRISHNAN RAMASAMY**

W.P. (MD) No.19995 of 2018

and

W.M.P. (MD) No.22969 of 2019

C.Chinnan

...Petitioner

Vs

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

2.The District Collector,
Madurai.

3.The Revenue Divisional Officer,
Usilampatti,
Madurai District.

4.The Tahsildar,
Thirumangalam Taluk,
Madurai 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 of the proceedings of the 1st respondent in PEN26/3/PT.10007/R2617518/2018-19/73/82936 dated 01.01.2019 and quash the same and consequently direct the respondents to count 50% of service rendered by the petitioner as Village Assistant paid from 01.06.1976 to 31.05.1995 along with the petitioner's regular service from 01.06.1996 to 30.06.2014 and sanction revised pension in terms of Rule 4(a) of Tamilnadu Village Assistant's Pension Rules, 1995 and G.O.Ms.No.408, Finance (Pension) Department dated 25.08.2009 and pay all arrears and back wages within a stipulated time.

(Prayer has been amended vide order dated 13.09.2020.)

For Petitioner : Mr.N.Karthik Kanna

For R1 : Mr.P.Gunasekaran

For R2 to R4 : Mr.R.Murugaraj

Government Advocate



ORDER

Challenging the impugned order dated 01.01.2019 passed in PEN26/3/PT.10007/R2617518/2018-19/73/82936 by the 1st respondent and for issuing a direction to the respondents to count 50% of service rendered by the petitioner as Village Assistant paid from 01.06.1976 to 31.05.1995 along with the petitioner's regular service from 01.06.1996 to 30.06.2014 and to sanction the revised pension, in terms of Rule 4(a) of Tamilnadu Village Assistants' Pension Rules, 1995 and G.O.Ms.No.408, Finance (Pension) Department dated 25.08.2009 and to pay all arrears and back wages to the petitioner, the present writ petition has been filed.

2.The learned counsel appearing for the petitioner would submit that the relief sought for by the petitioner in this writ petition is squarely covered by the judgment of this Court passed in **W.A. (MD) Nos.1388, 1389, 1400 to 1404 and 1406 of 2019 dated 26.11.2019 (The State of Tamilnadu, represented by its Secretary, Department of Revenue, St.George Fort, Chennai and others Vs. M.Shunmugaiah and another)**. The relevant portion of the same is as follows:-

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 (தலையாரி), Vetti (வெட்டி) or Nirganti (நிர்கந்தி).

(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.

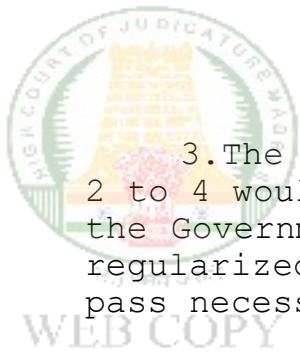
11. Therefore, in our considered view, the interpretation sought to be made before us by referring the Conduct Rules, 1983 and more particularly Rule 3 thereunder to state that all village servants are deemed to be part-time servants. However, this argument is not acceptable. More or less an identical 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.



3.The learned Government Advocate appearing for the respondents 2 to 4 would submit that necessary proposal has already been sent to the Government for revision and enhancement of pension for the pre-regularized service of the employees and that the Government has to pass necessary Government Orders in this regard.

4.Further, the aforesaid legal position, which has been laid down by the Hon'ble Division Bench of this Court in various decisions, is not disputed by the learned counsel appearing on behalf of the respondents.

5.Following the above and in view of the submission made by the learned counsel on either side, this Court is inclined to allow this writ petition and accordingly, the same is allowed as prayed for by the petitioner. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)

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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

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361, Anna Salai,
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+1 CC to SGP (SR-20030[F] dated 14/10/2020)

W.P. (MD) No.19995 of 2018

13.10.2020

CK (CO)

NR (10/11/2020) 7P : 6C