



W.P.No. 4189 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No. 4189 of 2018
and WMP.No.5136 of 2018

M.Rajalakshmi,
Bill Collector (Retd)

..Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. By its Secretary,
Department of Municipal and
Water Supply Department,
Fort. St. George, Chennai – 600 009.
2. The Director,
Local Fund Audit Department,
4th Floor, Kuralagam,
Chennai – 600 108.
3. The Director of Town Panchayat,
Kuralagam Buildings, Chennai – 600 108.
4. The Assistant Director,
Local Fund Audit Department,
Kumaran Vanika Valaagam,
Tiruppur, Tiruppur District.
5. The Assistant Director,
Town Panchayat, Collectorate Campus,
Erode, Erode District.
6. The Executive Officer,
Town Panchayat (Selection Grade),
Madathukulam, Tiruppur

.. Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India for Writs of Certiorarified Mandamus, calling for the records relating to the impugned proceeding issued by the 3rd respondent Director of Town Panchayat in Na.Ka.No.11251/2014/E2 dated 03.11.2016, quash the same and further direct the respondents herein to sanction and disburse forthwith the pension benefits due to the petitioner viz., the General Provident Fund, Gratuity, Pension admissible to the petitioner with penal interest at the rate of 18%.

For Petitioner	: Mrs.Abisha Isaac for M/s.Isaac Chambers
For Respondent	: Mr.U.M.Ravichandran Special Government Pleader [R1 to R5 Mr.R.Neethiperumal Government Advocate [R6]

ORDER

The prayer sought for herein is for issuance of a writ of certiorarified mandamus, to quash the order passed by the 3rd respondent Director of Town Panchayat in Na.Ka.No.11251/2014/E2 dated 03.11.2016 and further direct the respondents herein to sanction and disburse the pension benefits due to the petitioner viz., the General Provident Fund, Gratuity, Pension admissible to the petitioner with penal interest at the rate of 18%.



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2. The petitioner joined in service on 26.05.1985 as Noon Meal Organizer on consolidated pay in the Panchayat Union Elementary School, Bodipatty, Udumalpet under the State Government Noon Meal Scheme viz., Puratchi Thalaivar MGR Noon-meal scheme.

3. Later she was transferred to Thumpalappatti Panchayat Union Elementary school at Udumalpet. Thereafter, she placed under regular time scale of pay with effect from 01.01.1996 as per G.O(Ms)No.2 of Social Welfare and Nutritious Meal Programme Department, dated 03.01.1996 along with regular annual increment up to 08.07.2003.

4. While so in the year 2003 especially in July 2003, since large number of Government of Tamil Nadu employees went on strike, there was a contingency arouse, therefore, the eligible candidates, who had been in service like the petitioner had been given the chance of joining the post of Junior Assistant on consolidated pay. Accordingly, the petitioner was appointed as Junior Assistant in the office of Assistant Inspector of Labour, Udumalpet. In order to join in the said service, the petitioner resigned the job viz., Noon Meal Organizer and the resignation



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was accepted with effect from 08.07.2003 and after relieving the said job, she joined on the next day i.e, 09.07.2003 as per the proceedings of the Deputy Commissioner of Labour dated 09.07.2003. Thereafter, the petitioner was transferred as Junior Assistant at Bharathiyar Centenary Government Girls Higher Secondary School, Udumalpet by deployment vide proceedings of the Chief Educational Officer, Coimbatore dated 03.09.2004, where she was joined the duty on 03.09.2004. Thereafter in the year 2007, the Tamil Nadu Public Service Commission invited application for various posts under the Tamil Nadu Ministerial service, which includes the Bill Collector job. The petitioner participated in the selection process and she was selected and appointed as Bill Collector by the order of the District Collector, Tiruppur in the office of the sixth respondent under time scale of pay by proceedings dated 01.06.2009 and she was joined on 05.06.2009.

5. After serving 24 years and 9 months, the petitioner retired from service on 28.02.2010 on attaining the age of 58 years. Therefore the entire service rendered by the petitioner is without any break or blemish and to the utmost satisfaction of all concerned.



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6. However, insofar as the pensionable benefits for the petitioner is concerned, when the pension proposal was submitted, the Principal Accountant General, Chennai returned the proposal stating that since the petitioner was regularized only from 09.07.2003 in the post of Junior Assistant, she would not be given pensionable service in view of G.O.Ms.No.259, (Finance – Pension) Department, dated 06.08.2003, as it is stated that those persons, who were appointed in regular service after 01.04.2003 were not entitled for such pensionable benefits and they were entitled only for Contribution Pension Scheme.

7. As against which, the petitioner has sent representation after representation, which was not considered and ultimately order has been passed by the Director of Town Panchayat i.e., third respondent dated 03.11.2016, where the third respondent citing the Government Orders viz., G.O.(Ms).No.6, Social Welfare and Nutritious Meal Programme dated 06.01.2010 as well as G.O.Ms.34 of the same department dated 14.03.2013 stating that 50% of the service rendered by the petitioner prior to 2003 as Noon Meal Organizer cannot be counted for the purpose of calculating the pensionable service to the petitioner and rejected the



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plea of the petitioner by order dated 03.11.2016. Challenging the same, the present writ petition has been filed.

8. Heard Mrs.Abisha Isaac, learned counsel appearing for the petitioner, who would submit that insofar as the job of Noon Meal Organizer is concerned, though initially it was considered to be a part time job subsequently, after realizing the pressure and involvement in the said job, where those who were working as Noon Meal Organizer were pressed into service from morning to evening, therefore that was treated as a full time job and in this regard number of judgments have been passed by this Court.

9. Moreover by virtue of G.O.Ms.2 referred to above dated 03.01.1996, the services of the petitioner and the similarly placed persons, who were working as Noon Meal Organizer on consolidated pay had been regularized with time scale of pay with effect from 01.01.1996.

10. In the said job, the petitioner had worked till 2003 and on appointment as Junior Assistant as stated supra after relieving from the



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job of Noon Meal Organizer with effect from 08.07.2003 and on the next day, the petitioner joined on 09.07.2003 as Junior Assistant. Thereafter by a special competitive exam, the petitioner has become successful and accordingly he was appointed as a Bill Collector in the Town Panchayat and thereafter, the petitioner after rendering long years of service as stated supra retired on superannuation. Therefore, the petitioner would be entitled to get the benefit of calculating the 50% of the service rendered as Noon Meal Organizer prior to 2003 for the purpose of calculating the pension.

11. In this context, the learned counsel would point out that though the controversy is, as to whether the 50% of the service rendered by the persons like the petitioner, who worked as Noon Meal Organizer can be taken as a considerable service or not, had engaged this Court in number of litigations, where series of orders were passed by the Writ Court, thereafter, by Division Bench orders and ultimately the issue was settled by a Full Bench decision dated 03.12.2019 in W.A.No.158 of 2016 & Batch in the matter of ***Government of Tamil Nadu represented by Secretary to Government and Ors. Vs. R.Kaliyamoorthy.***



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12. Relying upon this Full Bench judgment and the earlier decisions, the learned counsel appearing for the petitioner would submit that since the petitioner has complied with three conditions referred to in Rule 11(4) of the Tamil Nadu Pension Rules 1978 for calculating the 50% of the service rendered by the petitioner as Noon Meal Organizer, the petitioner would be entitled to get the pensionable benefits. Therefore the rejection now made by the third respondent through the impugned order is bad in law. Hence, the learned counsel appearing for the petitioner seeks indulgence of this Court.

13. *Per contra*, Mr.U.M.Ravichandran, learned Special Government Pleader appearing for the respondents 1 to 5 would submit that the Noon Meal Organizer post was a part time job even G.O(Ms).No.2, heavily relied by the petitioner also disclose that it is a part time job and in the said part time job, the petitioner worked till 08.07.2003 and she resigned on her own volition and joined in the new job on 09.07.2003.



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14. Insofar as the pensionable benefits for calculating the 50% of the service rendered earlier before absorption is concerned, there is a cut off date called 01.04.2003, before which, who were absorbed on regular post or reappointed in that post also can be regularized or absorbed on or before 01.04.2003, then only the service rendered in the erstwhile job i.e., 50% of the service rendered in the erstwhile would be taken into account.

15. Hence in this regard, the petitioner admittedly joined in the Junior Assistant post only on 09.07.2003 i.e., after the cut off date 01.04.2003. Hence, one of the conditions imposed under Rule 11(4) of the Tamil Nadu Pension Rules, 1978 has not been complied with.

16. Moreover, insofar as the service rendered by the petitioner as Noon Meal Organizer is concerned, though a special time scale of pay had been fixed on these people like the petitioner as Noon Meal Organizer in order to give some solatium to them and that would not confer the right on the petitioner to claim that it is a full time job. Therefore, on that pretext the petitioner would not be entitled to take



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50% of the service rendered by her for the purpose of calculating the pensionable benefits after her superannuation.

17. Therefore for all these reasons, the petitioner is not entitled to get the benefit of calculating the 50% of the service rendered earlier prior to 09.07.2003 and she would not be entitled to get the benefit of pension. Hence, the plea raised by the petitioner against the impugned order is not sustainable and therefore, the learned Special Government Pleader seeks sustainment of the order impugned in this writ petition.

18. I have considered the said rival submissions made by the learned counsel appearing for both sides and have perused the materials placed before this Court.

19. Insofar as the petitioner's job as Noon Meal Organizer with effect from 26.05.1985 till 08.07.2003 without any break is not in dispute.



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20. Since the petitioner had been appointed as Junior Assistant on 09.07.2003 and in order to join in the said post, she resigned the job on 08.07.2003 and the resignation was accepted only with effect from 08.07.2003 and on the next day since she joined in the Junior Assistant post, there is absolutely no break in service on the part of the petitioner.

21. That apart, Sub-Rule (4) of Rule 11 of the Tamil Nadu Pension Rules, 1978 has brought in, where it suggested that half of the service rendered under the State Government in non-provincialised service, consolidated pay, honorarium or daily wages basis on or after 1st January 1961 in respect of Government employees absorbed in regular service before 1st April 2003 shall be counted for retirement benefits along with regular service.

22. Rule 11(4) also since talks about three conditions, whether the conditions are fulfilled by the candidates, who seeks such a benefit of 50% of service rendered earlier by them for the purpose of calculating the total pensionable service, the learned Special Government Pleader would contend that since the petitioner has not fulfilled atleast one of the



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conditions imposed under Rule 11(4) and she joined in the post of Junior Assistant only after the cut off date, therefore the petitioner is not entitled to get the benefit of pension by calculating the 50% of the earlier service rendered by her. Hence, the rejection made by the respondents through the impugned order is to be sustained.

23. The said argument made by the learned Special Government Pleader appearing for the respondents is to be rejected for the reason that, the cut off date fixed in the said Rule whether is correct or not for the purpose of calculating the 50% of the service as a pensionable service, had engaged this Court, in the earlier order passed by a learned Judge of this Court in the case of ***T.Thangamani Vs. The Government of Tamil Nadu rep by its Secretary*** in ***W.P.No.23144 of 2015***, where the learned judge has placing the entire history had passed a very exhaustive order.

24. In this context, the learned judge has relied upon his own judgment made in ***(2014) 6 MLJ 316*** in the case of ***P.chinniyan Vs. State of Tamil Nadu rep. By its Secretary to Government and Ors.***



25. In the said **Chinniyan's** case referred to above, the Court has observed as follows:

“21. The difference between Rules 11(2) and 11(4) of the Tamil Nadu Pension Rules is that one should have been absorbed in regular service before 01.04.2003, for counting half of the service rendered on consolidated pay / honorarium / daily wages basis. The date 01.04.2003 is chosen, since a New Pension Scheme was introduced for persons, who are recruited after 01.04.2003 into the Government service. The Tamil Nadu Pension Rules are not applicable to the employees who are recruited after 01.04.2003.

22.(a) In my view, in any stretch of imagination, the absorption of the petitioner into service after 01.04.2003 cannot be equated with the persons who are freshly recruited after 01.04.2003 into the Government service. The persons, who are fresh recruits after 01.04.2003, are governed by New Pension Rules and the persons, who are absorbed after 01.04.2003, like the petitioner, are not extended the benefit of New Pension Scheme also.

(b) At this juncture, it is relevant to extract paragraph 9 of the judgment of the learned Single Judge dated 30.11.2010 in W.P.No.25293 of 2010, in this regard, wherein, it was noticed that the persons, who are absorbed after 01.04.2003, like the petitioner herein, were not granted the benefits of the New Pension Scheme also. Paragraph 9 is extracted hereunder :

9. At this juncture, the learned counsel for the petitioner also brought to my notice that the Government issued G.O.(D)No.332, Environment and Forest Department, dated 19.11.2008 in favour



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of one V.Murugan, Forest Guard, who retired on 30.9.2005, ordering to count 50% of his service from 1.9.1980 to 23.3.2003 for the purpose of sanction of pension to the said Murugan. The learned counsel for the petitioner also submits that the petitioner has not been paid any benefit under the new pension scheme and hence, there will be no impediment to extend the benefits of old pension rules to the petitioner as it was given to the said V.Murugan. Even in discretionary matters if the persons are identically placed, same treatment shall be followed to all, is well settled. I had an occasion to consider similar issue in the decision report in (2006) 2 MLJ 574 ([N.S.Balasubramanian V. Food Corporation of India](#)). The said decision was confirmed by the Division Bench of this Court (A.P.Shah, C.J. & K.C., J.) in W.A.No.956 of 2006, dated 30.10.2006 and by the Supreme Court in S.L.P.(C)No.6771 of 2007 dated 23.4.2007.

23. I am of the considered view that the action of the Departments in denying to count half of the long service rendered by the persons before the absorption into regular service, who are not fresh recruits, but absorbed into regular service after 01.04.2003, as per Rule 11(4) of the Tamil Nadu Pension Rules, has no rationale basis.

24. The State cannot deny the benefit of the Tamil Nadu Pension Rules based on the date of absorption, particularly, for the employees like the petitioner, who had rendered more than three decades of service before absorption. The petitioner or the persons situated like him cannot be blamed for non-absorption before 01.04.2003, though they rendered 2 to 3 decades of service before 01.04.2003.

25. It is a different matter if a person joined the



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service after 01.04.2003 on daily wages basis and he was absorbed thereafter. But in my view, the prescription of the cut off date as 01.04.2003 for absorption into regular service under Rule 11(4) of the Tamil Nadu Pension Rules, to count half of the service rendered prior to absorption has no rationale basis and the same is arbitrary and violative of [Article 14](#) of the Constitution. In fact Rule 11(4) of the Tamil Nadu Pension Rules is totally redundant, in view of Rule 11(2) of the Tamil Nadu Pension Rules. Rule 11(2) does not prescribe any cut off date as to absorption into regular service. The benefits given under Rule 11(2) cannot be deprived and taken away by Rule 11(4). Thus, the cut off date of absorption as 01.04.2003 prescribed in Rule 11(4) shall be ignored. Otherwise, it will lead to grave injustice.

26. The Government cannot deny the pensionary benefit to the petitioner by fixing the cut off date as 01.04.2003 for absorption thereby refusing to take into account half the service rendered before absorption for the purpose of pension. Admittedly, the petitioner has been in service on daily wages basis from 01.04.1967 till the date of his absorption as Mali on 20.10.2003, i.e., he served for more than 36 years before his absorption into regular service.

27. Further, as stated above, the petitioner cannot be faulted for the belated regularization of his service after 01.04.2003, though similarly situated persons like him in other departments were absorbed into regular service on completion of 10 years of service by giving the benefit of G.O.Ms.No.22, P & AR Department, dated 28.02.2006, and they have been given pension also.”



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26. Relying upon the said decision, the learned Judge has allowed the said writ petition also in ***Thangamani's*** case (cited supra).

27. Subsequently the matter has gone to the Division Bench, where a Division Bench of this Court in the case of ***Government of Tamil Nadu rep. By its Principal Secretary to Government, Forest and Environment Department and Ors. Vs. K.Sakthivel [2018 (1) CWC 689]*** has held that Rule 11(4) is totally redundant in view of Rule 11 (2), which does not prescribe any cut-off date as to absorption into regular service. The benefits given under Rule 11(2) cannot be taken away by Rule 11(4) and therefore, the cut-off date prescribed as 01.04.2003 for absorption in Rule 11(4) should be ignored, otherwise it will lead to grave injustice.

28. Thereafter, the matter has been referred to a Full Bench of this Court for authoritative pronouncement on various issues as to the entitlement of the employees to get pensionary benefits based on the cut-off date viz., 01.04.2003.



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29. The Full Bench by judgment dated 03.12.2019 in

R.Kaliyamoorthy's case (cited supra) has answered the reference in the

following terms:

“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 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



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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.”

30. In paragraph 45(iii), it is stated by the Full Bench that, 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 regularized before 01.04.2003, half of such service rendered shall be counted for the purpose of conferment of pensionary benefits.

31. Since this being the law declared by this Court by a authoritative pronouncement i.e., Full Bench referred to above that is having the binding precedent and we all are bound by the said decision.

32. If we apply the said principle in the present facts of the case, where the petitioner worked as Noon Meal Organizer from 26.05.1985 till 08.07.2003 and on the next day, she joined in the post as Junior Assistant on 09.07.2003 and after rendering service including Bill Collector in the third respondent Department, she retired on superannuation.



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33. By virtue of G.O.(Ms.)No.2 referred to above dated 03.01.1996, where the special consolidated pay has also been allowed.

34. Therefore the question of absorption in the regular service which has already been taken place well before 01.04.2003 i.e., cut-off date does not arise.

35. If the petitioner worked in a Noon Meal Organizer has become the regular employee well before 01.04.2003, subsequent joining in the post of Junior Assistant and its absorption, which naturally after 01.04.2003 because she joined only on 09.07.2003 would no way take away the right already accrued on the petitioner to get the benefit of pension by calculating the 50% of the service rendered by the petitioner as a Noon Meal Organizer within the meaning of Rule 11(4) of the Tamil Nadu Pension Rules, 1978.

36. Though it was argued by the learned Special Government Pleader that conditions imposed by the Rule i.e., Sub-Rule(4) of Rule 11 has not been fulfilled by the petitioner, factually the conditions imposed



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therein has been fulfilled by the petitioner.

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37. The first condition is that, the service rendered shall be, in a job involving whole time employment. The post of Noon Meal Organizer though initially was a part time one, subsequently it has been declared as full time employment and they enjoyed the time scale of pay in full regular absorption including the dearness allowance etc. Therefore, the first condition has been fulfilled.

38. The second condition is that, the service rendered shall be on consolidated pay, honorarium etc. and subsequently absorbed in regular service under the State Government, here the petitioner has already been regularized on 01.01.1996. The third condition is that the service rendered shall be followed by absorption in regular service before 01.04.2003 without a break. Here also the petitioner without break had worked till 08.07.2003 even thereafter and during the said period between 26.05.1985 and 08.07.2003, the service rendered by the petitioner as Noon Meal Organizer since had been regularized on 01.01.1996, even that condition i.e., the third condition of Rule 11(4)



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also since has been fulfilled by the petitioner. Therefore, the said argument on the side of the respondents made by the learned Special Government Pleader cannot be countenanced.

39. Therefore the petitioner has fulfilled the conditions imposed under Rule 11(4) and based on the judgments referred to above especially the law declared by the Full Bench as referred to above in Clause(iii) of paragraph 45 of the Full Bench Judgment, the petitioner since is entitled to get the benefit of pension by calculating the 50% of the service rendered by her as a Noon Meal Organizer, the rejection now made through the impugned order for the reasons stated therein is liable to be interfered with as it could not stand in the legal scrutiny.

40. In that view of the matter, this Court is inclined to dispose of this writ petition with the following orders:

- ◆ That the impugned order is set aside and there shall be a direction to the respondents to process the pension papers of the petitioner by calculating the 50% of the service rendered by the petitioner between 26.05.1985 and 08.07.2003 as a Noon Meal Organizer



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and accordingly by calculating the total service rendered by the petitioner till her superannuation, extend the pensionary benefits to the petitioner.

- ◆ It is needless to mention that, while extending the benefits, the arrears of pension shall be calculated from the date of retirement and that shall also be paid to the petitioner.
- ◆ The needful as indicated above shall be undertaken by the respondents within a period of twelve (12) weeks from the date of receipt of a copy of this order.

With these directions and observations, this writ petition is disposed of accordingly. No costs. Connected miscellaneous petitions are closed.

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Index : Yes
Internet: Yes
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1. The Secretary,
Department of Municipal and
Water Supply Department,
Fort. St. George, Chennai – 600 009.
2. The Director,
Local Fund Audit Department,
4th Floor, Kuralagam,
Chennai – 600 108.
3. The Director of Town Panchayat,
Kuralagam Buildings, Chennai – 600 108.
4. The Assistant Director,
Town Panchayat, Collectorate Campus,
Erode, Erode District.
5. The Executive Officer,
Town Panchayat (Selection Grade),
Madathukulam, Tiruppur



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