IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.10.2021

PRONOUNCED ON : 07.01.2022

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.8917 of 2017
and
W.M.P.No.9837 of 2017

(Through Video Conferencing)

S.Krishnaraj ... Petitioner

vs.

1. The Principal Secretary to Government,
   Government of Tamil Nadu,
   Social Welfare & Nutritious Meal Department,
   Secretariat, Fort St.George,
   Chennai 600 009.

2. The Director,
   Social Welfare & Nutritious Meal Department,
   Arunachalam Street,
   Chindadripet, Chennai 600 002.

.. Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus to call for the records comprised in letter No.15325/SW4-2/2016-5, dated 21.10.2016 of the first respondent and quash the same and consequently direct the respondents to enhance special pension in accordance with consumer price index for payment .

For Petitioner : M/s.Lesi Saravanan

For Respondents : Mr.L.S.M.Hasan Fizal
Government Advocate.

O R D E R

The petitioner has challenged the impugned order dated 21.10.2016 of the first respondent bearing reference Letter No.15325/SW.4-2/2016-5.

2. By the impugned order, the first respondent has rejected the request of the petitioner for grant of enhanced pension prevailing consumer price index. The relevant portion of the impugned order reads as under:-

> "With reference to your representation fifth cited, I am directed to inform that the Government have categorized Noon Meal Workers as Part Time permanent employees of the respective Local Bodies providing Special Time Scale of Pay for the post of Nutritious Meal Organisers etc. inclusive of other allowance such as Grade Pay, Dearness Allowance, HRA, CCA, Hill Allowance, Winter Allowance and Medical Allowance. Further, the Government have also provided the benefit lumpsum grant of Rs.60,000/- when Noon Meal Workers retires.
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> 2. Similarly, as per the policy decision taken, Government have introduced Special monthly pension of Rs.700/- for the Noon Meal Worker. This monthly special pension has further been enhanced to Rs.1000/- with effect from 01.04.2013. The Government have further enhanced this pension to Rs.1500/- with effect from 01.02.2016 after taking into consideration of their demands etc.
>
> 3. I am therefore to inform that your request to grant the regular pension at the enhanced rate as per the prevailing consumer price index cannot be accepted".

3. The petitioner started working with the respondents on 06.06.1992 as a Noon Meal Organiser. The Petitioner eventually attained the age of superannuation on 30.06.2013. The Petitioner is a recipient of a pension. It is submitted that Special Pension of Rs.1,000/- paid to the petitioner is not linked to Dearness Allowance increase in the cost of living.

4. It is submitted the petitioner was declared as a "Permanent Part Time Employee" of the respondents and was therefore entitled for regular government pension under the provisions of the Tamil Nadu Pension Rules, 1978 .

5. It is submitted that the amount sanctioned as special pension to the petitioner is not sufficient to either take care

of himself or support of his family in the evening of his life under. It is submitted that the petitioner has been wrongly denied of government pension under the provisions of the Tamil Nadu Pension Rules, 1978.

6. It is submitted that the petitioner along with 31 others had sent a representation dated 31.07.2015 to the respondents for enhancement of pension as they were declared as "Permanent Part Time Employee" of the respondents and therefore entitled for regular government pension under the provisions of the Tamil Nadu Pension Rules, 1978.

7. Since the respondents had neither passed any order on the representation dated 31.07.2015 given by the petitioner and 30 others nor granted regular pension, the petitioner filed W.P.No.29926 of 2015 before this Court.

8. This Court by its order dated 23.09.2015 in W.P.No.29926 of 2015 directed the respondents to consider the representation dated 31.07.2015.

9. Pursuant to the above order, the first respondent has passed the impugned order and rejected the request of the petitioner for regular pension.

10. Appearing on behalf of the petitioner, the learned counsel submits that the petitioner having served from 1992 continuously as a "Full Time Employee" though designated as a "Permanent Part Time Employee" has not been given a decent pension, and that a meagre payment of Rs.1,000/- as special pension was not enough to take care of the petitioner or his family, considering the devaluation of money due to inflationary trends.

11. It is further submitted that the respondents have discriminated the petitioner as the petitioner's juniors who retired at different point in time after the petitioner's retirement are receiving higher special pension. It is therefore submitted that there was a large-scale discrimination.

12. It is submitted that the petitioner has toiled hard for more than 21-22 years for the respondents. It is therefore submitted that the petitioner cannot be denied Government Pension.

13. It is further submitted that the expression "Part Time" was a misnomer, as they performed duty of full-time employee in the schools under the local bodies of the respondents and

therefore were entitled for government pension under the Tamil Nadu Pension Rules,1978.

14. Alternatively, it was prayed that the petitioner’s pension may be directed to be enhanced considering the prevailing consumer price index to ensure a better standard of living in his evening of life for having toiled for more than 22 years for the Government.

15. Appearing on behalf of the respondents, the learned Government Advocate submits that though the petitioner has worked for a period of 21-22 years with the respondents, the petitioner was paid due compensation on the date of his superannuation and is a recipient of Special Pension in terms of the Government Orders issued from time to time and therefore there is no flaw in the impugned order of the first respondent in rejecting the impugned order.

16. It was further submitted that the post or job of Anganwadi Workers are not recognized anywhere in the Government Rules and nor such posts were created or included in the cadre rules as sanctioned post of the government. It is therefore submitted that neither can be there a regular pension nor enhancement of the pension.

17. It is submitted that persons like petitioner who were employed as Anganwadi Workers are not employees of the State as per the Rules and Schedules thereto.

18. The respondents submit that recruitment rules are applicable only to the employees of the State and that the State is not required to comply with the constitutional scheme of equality as adumbrated under Articles 14 and 16 of the Constitution of India.

19. It is further submitted that though Noon Meal Organisers are eligible for annual increment, maternity leave, compassionate appointment, medical allowance, Pongal bonus, etc., while in service, they cannot be equated on par with regular government employees either for grant of any enhanced pension or government pension under the aforesaid Rules.

20. It is submitted that as the petitioner was not holding any civil post, the petitioner was not entitled for government pension. It is submitted that the present Writ Petition filed by the petitioner is therefore liable to be dismissed.

21. I have heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents.

22. The Noon Meal Scheme was implemented by the Government of Tamil Nadu in the year 1982 from 01.07.1982. It opened an avenue for employment for semi-literate persons with lesser education qualifications with the Government and with the Social Welfare and Nutritious Meal Programme Department on a consolidated amount of salary/daily wages.

23. The Noon Meal Scheme was primarily intended to encourage the education to children from poorer and weaker sections of the society/communities. It was also intended curb the malaise of child labour which plagued the country since independence and before it. Thus, Noon Meal Scheme implemented goals enshrined in Article 24 of the Constitution of India. Article 24 of the Constitution reads as under:-

> "24. Prohibition of employment of children in factories, etc No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment Provided that nothing in this sub clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub clause (b) of clause (7); or such person is detained in accordance with the provisions of any law made by Parliament under sub clauses (a) and (b) of clause (7)".

24. The petitioner was appointed under one of the Nutritious Meal Programme implemented by the Government of Tamil Nadu under the following three major schemes:-

> " i. Puratchi Thalaivar M.G.R. Nutritious Meal Programme;
>
> ii. Integrated Child Development Services (ICDS) Scheme (Govt. of India / Sweden Government Assisted);
>
> iii. Tamil Nadu Integrated Nutritious Programme (World Bank Assisted)."

25. Presently, the Noon Meal Scheme is being implemented by Social Welfare and Nutritious Meal Programme Department. It operates under the Directorate of Social Welfare, Government of Tamil Nadu. Details of the Government Departments which have implemented the Noon Meal Scheme since its inception on 01.07.1982 are detailed below:-

Sl.No	State Department	Period
1.	Education Department	July 1982 to May 1990
2.	Rural Development Department	June 1990 to September 1992
3.	Social Welfare Department	October 1992 to September 1997
4.	Rural Development Department	October 1997 to 19th July 2006
5.	Social Welfare Department	Rural - From 20th July 2006 to till date Urban - From 23rd August 2007 to till date

26. Over a period of time, several Government Orders came to be issued, pursuant to which, the consolidated pay was ordered paid to the persons working under the various Nutritious Meal Programmes. It was also enhanced.

27. Still later, person employed under the institution of Nutritious Meal Programme were treated as "Part Time Employees" of the respective local bodies. Over a period of time, the monetary compensation paid was enhanced.

28. By G.O.Ms.No.370 dated 16.04.1989 of the Backward Classes Welfare, Nutritious Meal Programme and Social Welfare Department, the Government decided to treat persons like petitioners as "Permanent Part Time Employees" in the respective local bodies, as they were not governed by Pension Rules. Relevant portion of G.O.Ms.No.370 dated 16.04.1989 reads as under:-

> ".......... Since the programme is one of the Social Welfare measures like other developmental
>
> programmes implemented by the Government with the assistance of the Local Bodies, these employees cannot be continued on adhoc basis for ever. The Government have therefore, now decided to make the employees working under the programme as permanent part-time employees of the respective local bodies. Accordingly, Government direct that all the Child Welfare Organisers, Child Welfare Assistants, Nutritious Meal Organisers, Cooks and Helpers

employed under the programme, be made permanent part-time employees of the respective local bodies, viz., Panchayats, Panchayat Unions Municipalities and the Municipal Corporations, as the case may be, excluding employees of Integrated Child Development Services Centres.”

29. At the time when G.O.Ms.No.370, Backward Classes Welfare, Nutritious Meal Programme and Social Welfare Department, dated 16.04.1989 was issued, the Government was not clear as to whether these employees who were treated as “Permanent Part Time Employees” were to be given pension or not. However, what is evident is that an adhoc decision taken to given a status of permanency to those serving in the noon meal programme.

30. Later a decision was taken to grant lumpsum amount to these persons when retire from the services under G.O.(Ms.) No.24, Social Welfare and Nutritious Meal Programme Department, dated 28.04.2005.

31. Still later Special Pension was sanctioned for the first time to these employees under the G.O.(Ms) No.391, Finance (Pay Cell) Department, dated 15.09.2008. G.O. (Ms) No.391, Finance (Pay Cell) Department, dated 15.09.2008, granted Special Pension to Helpers Grade II / Cook Assistant, Helpers Grade I / Cook and Nutritious Meal Organisers, Anganwadi Workers and Mini Anganwadi Workers engaged by various local bodies in Nutritious Meal Programme. The Special Pension was subsequently enhanced by the following orders as detailed below:-

Sl. No.	G.O.Ms.	Dated	Cadre	Special Pension per month
1	G.O. (Ms) No.391, Finance (Pay Cell) Department	15.09.2008	Anganwadi Helpers Grade II/ Cook Assistant	Rs.500/-
			Anganwadi Helpers Grade I / Cook	Rs.600/-
			Noon Meal Organisers, Anganwadi Workers and Mini Anganwadi Workers	Rs.700/-

Sl. No.	G.O.Ms.	Dated	Cadre	Special Pension per month
2	G.O. (Ms) No.84, Social Welfare and Nutritious Meal Programme (SW7-2) Department	13.09.2013	i Anganwadi Worker ii. Mini Anganwadi Worker iii. Anganwadi Helper iv. Noon Meal Organiser v. Noon Meal Cook vi.Noon Meal Cook Assistant	Rs.1,000/-
3	G.O. (Ms) No.23, Social Welfare and Nutritious Meal Programme (SW7-2) Department	20.02.2016	i. Anganwadi Worker ii. Mini Anganwadi Worker iii Anganwadi Helper iv. Nutritious Meal Organiser v. Cook vi. Cook Assistant	Rs.1,500/-
4	G.O. (MS) No.314, Finance (Pay Cell) Department	25.10.2017	i. Noon Meal Organisers ii. Cooks / Cook Assistants iii Anganwadi Workers including Mini Anganwadi Workers iv. Anganwadi Helpers v. Village Panchayat Secretaries	Rs.2,000/-

32. Subsequently, by several orders, amounts to be paid at the time of retirement was also sanctioned and enhanced. Details of the grant of lump sum is given below:-

Sl. No.	G.O.Ms.	Dated	Cadre	Special Pension per month
	G.O.(Ms)No.24, Social Welfare and Nutritious Meal Programme Department	28.04.2005		
2	G.O. (Ms) No.62, Social Welfare and Nutritious Meal Programme Department	28.04.2005	Anganwadi Helpers, Cooks, Cook Assistants, and Mini Anganwadi Workers	Rs.20,000/-
			Anganwadi Helpers and Noon Meal Organisers	Rs.50,000/-
3	G.O. (Ms) No.24, Social Welfare and Nutritious Meal Programme (SW4-2) Department	20.02.2016	Anganwadi Helpers, Cooks, Cook Assistants, and Mini Anganwadi Workers	Rs.25,000/-
			Anganwadi Helpers and Noon Meal Organisers	Rs.60,000/-
4	G.O. (MS) No.314, Finance (Pay Cell) Department	25.10.2017	Cooks, Cook Assistants, and Anganwadi Helpers	Rs.50,000/-
			Noon Meal Organisers,	Rs.1,00,000/-

33. With the above factual background, I shall first deal with provisions of the Tamil Nadu Pension Rules 1978 to examine whether petitioner and others who were employed by the

respondents were entitled to pension under the aforesaid Rules.

34. Rule 2 of the Tamil Nadu Pension Rules, 1978 deals with applicability of the pension Rule. It draws the contours for application of the above Rules. It reads as under:-

> 2. Application.- Save as otherwise provided in these rules, these Rules shall apply to all Government Servants appointed to Services and posts in connection with the affairs of the State which are borne on pensionable establishments, whether temporary or permanent, but shall not apply to -
>
> i. Persons in causal and daily rated employment;
>
> ii. Persons paid from contingencies;
>
> iii. Persons employed on contract expect when the contract provides otherwise;
>
> iv. Members of the All-India Services;
>
> v. Persons entitled to the benefit of a Contributory Provident Fund;
>
> vi. Persons who are entitled to the benefits under the Factories Act, 1948 and the Employees Provident Fund Act, 1952 excluding those who are governed by Statutory Service Rules and belong to pensionable service.
>
> [Provided that these rules shall not apply to Government servants appointed on or after the 1st April 2003, to services and posts in connection with the affairs of the State which are borne on pensionable establishment, whether temporary or permanent.]

35. Provisions of the Tamil Nadu Pension Rules, 1978 applies:-

a) To a"Government Servants";
b) who is appointed to the "service and post" in connection with the affairs of the State;
c) which are borne on pensionable establishments,
d) whether temporary or permanent employees.

36. Provisions of the Tamil Nadu Pension Rules, 1978 applies:-

i. Persons in causal and daily rated employment;

ii. Persons paid from contingencies;

iii. Persons employed on contract expect when the contract provides otherwise;

iv. Members of the All-India Services;

v. Persons entitled to the benefit of a Contributory Provident Fund;

vi. Persons who are entitled to the benefits under the Factories Act, 1948 and the Employees Provident Fund Act, 1952 excluding those who are governed by Statutory Service Rules and belong to pensionable service.

37. Only following categories of persons are outside the purview of Tamil Nadu Pension Rules, 1978:-

i. Persons in causal and daily rated employment;

ii. Persons paid from contingencies;

iii. Persons employed on contract expect when the contract provides otherwise;

iv. Members of the All-India Services;

v. Persons entitled to the benefit of a Contributory Provident Fund;

vi. Persons who are entitled to the benefits under the Factories Act, 1948 and the Employees Provident Fund Act, 1952 excluding those who are governed by Statutory Service Rules and belong to pensionable service".

38. The petitioner is not falling under any of the above exceptions. Therefore, prima facie the petitioner appears to be covered by the provisions of the Tamil Nadu Pension Rules, 1978.

39. However, to be eligible for the government pension, the petitioner should have not only been a "government servant", but also employed in a post in connection with the "affairs of the state" and should have also been employed in a"pensionable establishment".

40. A person was eligible to be considered eligible for Government pension under the above Rules even if such a person was not holding a permanent post as long such a person satisfied the above requirements.

41. A further exception to the applicability of the Government pension is prescribed in Rule 84 of the Tamil Nadu Pension Rules, 1978. Rule 84 of the Tamil Nadu Pension Rules,1978 reads as under:-

84.Service under Local Funds. –

(1) Apart from any special provisions from under the following rules, service paid for from a Local Fund does not qualify for pension.
(2) In the case of other Local Funds, the rule that service does not qualify for pension does not prohibit the grant and payment of pensions in conformity with the general terms of the pension rules by the authorised administrators of the funds. But government is in no way responsible for the sanction or continuance of such pension, and no standing order for their payment may be issued to or received by any Government treasury, and the procedure in rules 51, 53, 56-59, 61-68, 70,71 and 78-80 do not apply to them.

Note1.- All the members of the pensionable establishment of a Government school employed in such school at the time of its transfer to municipal councils will be held to be still rendering service qualifying for pension from Government under sub-rule (7) of this rule.

Note 2.- All servants of Government other than those referred to in Note 1 above, transferred from qualifying service to service under a municipal council, are entitled to claim payment by such municipal council, or the usual contribution to Government in order to maintain their claim to pension eventually from State Funds.

(3) Service in the following establishment paid from Local Fund is treated as qualifying service for pension provided that pension for service under the Fund is Paid from the Fund, the rule of proportions being applied in the case of service paid partly from the Fund and partly from other sources. Establishment paid from Port Funds managed by the Government.

Note 1.-The transfer of Government servants to service under Local Funds should ordinarily be dealt with under the rules regarding foreign service. The application of the rule of proportions to service partly under a local fund requires the specified sanction of Government who before giving such sanction should satisfy itself that the fund in question is not of a merely temporary character, that it is solvent and able to bear the charge and that the pension can legally be charged to it.

Note 2. - Service in establishment paid from the Madras Coast Light Fund qualifies for pension from the 1st April 1904 and service in establishment paid from the Pilotage, Landing, Shipping Fees and Pier Funds, from the 1st April 1905.

Note 3.- Rule 1 under this rule is not applicable in the case of a municipal employee for part of whose service contribution was paid under rule sub-rule (5) of this and a pension cannot therefore, be sanctioned which is chargeable to Government and the municipality according to the rule of proportions,

Note 4.- The rule of proportions is applied only in cases where officers are transferred in the interest of the service from Government employment to service under Excluded Local Funds and vice versa ; where an officer is not transferred but resigns the one service to take up other, rule of proportions should not be applied, but separate pension may be given for the different services.

Note 5.- When a Government Officer is compulsorily transferred to an appointment paid by a Local Fund and is subsequently dismissed therefrom he has no claim to a pension or gratuity but if Government consider that he is deserving of a compassionate allowance it may award a pension not exceeding that which could have been granted as a compensation pension on the termination of the officer's service under Government.

(4) Any person transferred from a local body in consequences of the transfer of such body to the control of the State Government shall not be

entitled to count his previous service under the said body for pension, unless-

(1) Such service was rendered in a pensionable post or posts and pensionary contributions were being paid on his behalf by such local body; or

(2) Such person was subscribing to a provident fund maintained by such local body; and

(i) such local body agrees to contribute its share of the pension calculated according to the rule of proportion; and

(ii) such person agrees to for ego the bonus earned by him in respect of his service under the local body.

(5) The administrators of a Local Fund may, with the permission of the Government make a permanent arrangement for contributing for pensions from the Consolidated Fund for its permanent employees or for any specified classes of them by paying to the Government a contribution of one-ninth of the sanctioned salaries of the several appointment.

Provided that-

(a)the contribution must be paid in full at the beginning of each month by cash or cheque to the nearest Government Treasury. Any default in the payment of the contribution entails forfeiture of the claim against the Government.

(b) The bills for establishment charges must be subject to audit by the Government with a view to ensuring that health Certificates have been obtained for a new entrant; that the contributions are recovered in respect of the whole establishment sanctioned; and that no employee in any month draws more than the amount sanctioned for the appointment held by him.

Arrear contributions in respect of either individual officer or classes of officers proposed with a view to render past services qualifying cannot be accepted.

No officer or servant of a district board entered in its service on or after the first day of April 1932 shall be eligible to be paid any pension from the fund of the board, nor shall any pensionary contribution be paid on his behalf from such fund. Where an officer or servant of any such board was on the said date, holding in a post in its service in respect of which pensionary contribution was being paid with the previous sanction of the Government, such contribution shall, unless the Government otherwise direct, continue to be paid so long as the officer or servant continues to hold such post or any other post in respect of which pensionary contribution was being paid with such sanction of the said date. Contribution towards pension will continue to be paid in respect of incumbents whose services are pensionable under this "sub-rule in district where a Provident Fund Scheme has been or will be introduced, so long as the individual concerned is in service.

Note 1.- There is no authority for receiving pensionary contributions, arrear or otherwise, from a local body for individual employees selected from among its establishment. The note in this rule authorizes Government to permit the Administrators of a Local Fund to contribute for pensions from the Consolidated Fund for the whole of its permanent employees or for any specified classes of them. It is intended that the contribution should be calculated upon the total of the sanctioned salaries of the appointments in respect of which they are paid, without reference, to the question whether the. particular individuals who at any time hold the appointments are rendering qualifying service or not. The effect of a transfer to service under a Local Fund in the case of any particular individual a pension from Consolidated Fund if the appointment to which he is transferred is one of class for which contributions are paid, whether his previous service under Government was qualifying or not but it will not qualify if the appointment does not belong to such a class.

Note 2.- For the purpose of this rule Audit by the Examiner or Local Fund -Accounts may be regarded as audit by Government.

Note 3.- The reporting on applications for pensions should however, be undertaken by the Accountant-General's Office, and the annual establishment returns should, therefore, be recorded in that office.

Note 4.- If an officer, whose service is pensionable under the provisions of this sub-rule, is detached on temporary duty to a non pensionable post or to a post under the same or a different local board which is non-pensionable, under that rule, he counts his detached service under rule 12.

Note 5.- Pensionary contribution is payable by the local body concerned on the personal allowances paid to the employees in addition to the contribution fixed for the scales of pay of their posts.

Note 6.- Pension payable to local board servants in respect of whom pensionary contribution is recovered under this sub-rule will be based on the pay that would have been drawn by them had the local body not reduced by the pay of those servants as a measure of retrenchment.

(6) An officer who is in qualifying service under Government may be transferred by the Government to service under a Local Fund under the same limitations and conditions as are applicable to transfers to foreign service (see Fundamental Rule 129).

(7) Teachers and other members of the pensionable establishment of a Government school, who are transferred with the school to which they belong for service under local board or municipal council continue to render service qualifying for pension payable by the Government irrespective of the institution in which they are employed on similar duty, provided such institution is under the control of the same local board or municipal council.

Note 1.- If the pay of an officer is increased after he is transferred, with the school to which he belongs to service under local boards, the Audit Officer will submit an alternative report as to the pension admissible on the basis of the pay enjoyed at transfer and at retirement, and in each case the Director of Public Instruction will make his recommendations for the grant of the higher or lower pension, as may be deemed suitable for the sanction of Government.

Note 2.- The audit staff under the Examiner of Local Fund Accounts shall, at the time of local audit of accounts of local bodies, call for and check the Service Books of teachers and other staff under local bodies, who are eligible for pension under this sub-rule of the Civil Service Regulations and who are likely to retire before the time of the next annual or local audit verify the services rendered by the teachers from independent records maintained in the audit office of local bodies and certify in writing in the service books as to the correctness of the entries made in regard to the teachers and the staff.

(8) If an Officer, whose service is reckoned as pensionable under the provisions under sub-rule (5) is transferred to the similarly pensionable establishment of another Local Fund, the transfer will not interrupt the continuity of service for pension. Transfers may also be made between such service under Local Funds and service in Government establishments.

42. Service which are paid from the "Local Funds" are not eligible for pension as is evident from a reading of Rule 84 of the Tamil nadu Pension Rules,1978.

43. The expression 'Local Fund Administered by Government is defined in Rule 3(k) of the Tamil Nadu Pension Rules, 1978. It reads as under:

(k) 'Local Fund Administered by Government' means the fund administered by a body which by law or rule having the force of law, comes under the control of the government and over whose expenditure the Government retains complete and direct control;

44. Thus, as per Rule 84 of the Tamil Nadu Pension Rules, 1978 no pension is payable for service paid from "Local Fund"simplicitor other than the situation covered under sub clause (2) to (8) of the aforesaid Rules. As per Sub Rule (5) to Rule 84 of the Tamil Nadu Pension Rules, 1978, the administrators of a "Local Fund" may, with the permission of the Government make a permanent arrangement for contributing for pensions from the Consolidated Fund for its permanent employees or for any specified classes of them by paying to the Government a contribution of one-ninth of the sanctioned salaries of the several appointment.

45. Sub Rule 84(2) specifically states that "in the case of other Local Funds, the rule that service does not qualify for pension does not prohibit the grant and payment of pensions in conformity with the general terms of the pension rules by the authorised administrators of the funds."

46. Specified categories of services paid of "Local Fund" are eligible for pension under sub rule (2) to (8) of Rule 84 of Tamil Nadu Pension Rules, 1978 which is different from the Government Person .

47. As per Rule 128 of the Fundamental Rules which is in effect from 1922, Government servants paid from the "Local Funds" which are administered by the Government are subject to the provisions of Chapter 1

to XI of the aforesaid Rules. However, as per the Ruling given therein "Employees of local funds administered by Government who are not paid form the Consolidated funds of the State are not government servants but are subject to provisions of Chapter 1 to XI of the aforesaid Rules.

48. Rate of contribution is prescribed under Rule 116 of the Fundamental Rules. These aspects are neither forthcoming in the affidavit filed in support of the Petition nor in the counter of the second respondent nor in the impugned communication.

49. Event otherwise, nothing precludes an authorized administrator of a "Local Fund" other than "Local Fund administered by the Government" to pay pension to its employees. In the former case, the Government is not responsible for

sanction and continuance of such pension. At the same time, services paid out of "Local Fund" is treated as a qualifying service for the purpose of Rule 12 of the Pension Rules provide that pension for such service is paid from the fund, the rule of proportions is to be applied in the case of service paid partly from the Fund and partly from other sources Note 1 to Note 5.

50. For the salary paid out of the "Local Fund", the administrator of such "Local Fund" could independently could make permanent arrangement for pension from and out of the Consolidated Fund for the permanent employees as is evident from a reading of Rule 84.

51. Thus, a distinction has to be inferred between "Local Fund" simplicitor and "Local Fund Administered by Government".

52. If the salary that paid to the petitioner was out of the "Local Fund", the petitioner will not be entitled for Government pension as is event from a reading of Rule 84 of the Tamil Nadu Pension Rules, 1978.

53. However, the Counter filed by the 2nd respondent also does not clearly spell out whether the salary paid to the petitioner as a Noon Meal Workers was out of the "Local Fund" simplicitor or "Local Fund Administered by the Government or "otherwise."

54. Though the expression "Pensionable Establishment" is used in Rule 84 and in few other places in the Tamil Nadu Pension Rules, 1978, it is not defined.

55. The expression was considered by the Hon'ble Supreme Court of India in K.Anbazhagan and Ors. v. High Court of Madras and Ors. (2018) 9 SCC 293. The Court in para 28 after extracting Rule 2 of the Tamil Nadu Pension Rules, 1978, observed as follows:-

> "28. The expression "pensionable establishment" has been used in Rule 2. Rule 11 sub-rule (3) also uses the expression "non-pensionable establishment".An indication in Chapter 12 of the Rules i.e. Rule 84 is given that service paid for from a local fund does not qualify for pension which indicates that services paid for from a local fund are services in "non-pensionable establishment". For the purposes of this case, we have to only consider as to whether the establishment where the appellants were appointed and working was a "pensionable

establishment” or “non-pensionable establishment”.

56. This Court by its Order dated 08 July 2015 in W.P.No.20133 of 2015, S.Anbarasu v. The Principal Secretary to Government of Tamil Nadu, Social Welfare Department &Ors.,observed that the employees under the “Noon Meal Programme” administered by the Government of Tamil Nadu were in “whole-time” employment and not “part-time” employment and thus entitled to “Government Pension” Relevant portion of the order is extracted below:

> “41. Again, at the risk of repetition, it is to be reiterated that the employees in the noon-meal schemes were working for more than 8 hours before issuance of G.O.Ms.No.58, from 7.30 a.m. to 4.30 p.m. and only in G.O.Ms.No.58, the time was fixed as 8 hours from 8.00 a.m. to 4.00 p.m. Hence, I have no hesitation to state that the employees of noon-meal schemes are in whole-time employment and if so, they are entitled to the same treatment as that of the employees governed under Rule 11(2) of the Tamil Nadu Pension Rules. Hence, prescription of the cutoff date as 01.04.2003 in G.O.Ms.No.34, dated 14.03.2013, is bad and illegal.”

57. The Court however in the above case did not examine the issue in the light of Rule 84 of the Tamil Nadu Pension Rules,1978.

58. Therefore, the point for consideration is whether the petitioner can be said to be a “Government Servant” for the purposes of Tamil Nadu Pension Rule, 1978 or not and whether the salary of the petitioner was paid out was from a “Local Fund” simplicitor or “ local fund administered by the Government”. The Ruling under Rule 128 of the Fundamental Rules, however seems to indicate that even employees of local fund administered by Government who are not paid from the consolidated funds of the State are not “Government servants”.

59. These aspects would require a proper determination on facts which are not readily available from the pleadings.

60. The expression “Government Servant” is also notdefined in the Tamil Pension Rule 1978. It is defined under Rule 2(3) of the Tamil Nadu Government Servants’ Conduct Rules, 1973. It reads as under:

Rule 2 (3):"Government Servant" means any person appointed to any "civil service" or post in connection with the affairs of the State of Tamil Nadu.*

Explanation (1):- The Government servants holding posts in the Tamil Nadu State and Subordinate Services shall be classified as follows:-

Group-A: Government servants in posts having pay levels from 25 to 32 drawing the pay of Rs.59300 - Rs.187700 to Rs.128900 - Rs.225000.

Group -B:Government servants in posts having pay levels from 13 to 24 drawing the pay of Rs.35,900 - Rs.113500 to Rs.57700 - Rs.182400

Group -C: Government servants in posts having pay levels from to 12 drawing the pay of Rs.15,900 – Rs.50400 to Rs.35600 – Rs.112800

Group -D: Government servants in posts having pay level 1 drawing the pay of Rs.15700 - Rs.50000.

[*Substituted as per G.O.Ms No.21, P&AR(A) Department, dated.05.03.2019.]

61. Prior to G.O.Ms No.21, P&AR(A) Department, dated 05.03.2019 classification were as under:-

(3) "Government Servant" means any person appointed to any civil service or post in connection with the affairs of the State of Tamil Nadu.

* Explanation (1):- The Government servants holding posts in the Tamil Nadu State and Subordinated Services shall be classified as follows:-

Group-A: Government servants in posts drawing Grade pay of Rs.6,600/- and above.

Group -B: Government servants in posts drawing Grade pay of Rs.4,400/- and above but below Rs.6,600/-

Group -C: Government servants in posts drawing Grade pay of Rs.1,400/- and above but below Rs.4,400/-

Group -D: Government servants in posts drawing Grade pay of Rs.1,300/- *Inserted in G.O.Ms No.158, P&AR(A) Department, dated.06.11.2009.

Explanation-(2): A Government servant whose services are placed by the Government at the disposal of a company, corporation, organisation or a local authority shall, for the purpose of these rules, be deemed to be a Government servant serving under the Government, notwithstanding that his salary is drawn from sources other than from the Consolidated Fund of the State;

62. Thus, a person is a "Government Servant" if such a means any person appointed to any "civil service" or post in connection with the affairs of the State of Tamil Nadu. The post held by the petitioner as a "Permanent Part Time Employee" under Social Welfare Department in terms of G.O.Ms.No.370 dated 16.4.1989. It is a substantive post. It is a civil post. It is a post in the affairs of the State.

63. As per Rule 2 of the Tamil Nadu Pension Rules, 1978, even a temporary employee is entitled for pension. Since the post held by the petitioner was treated as a "permanent part time post" in terms of G.O.Ms.No.370 dated 16.4.1989 the petitioner is to be treated as a "Government Servant". There should no difficulty in interring that the petitioner was a "Government Servant", if the petitioner satisfied the requirement of Rule 12 of the Tamil Nadu Pension Rues, 1978.

64. Rule 12 of Tamil Nadu Pension Rules, 1978 which deals with Conditions subject to which service qualifies for pension reads as under:-

"(1) The service of a Government Servant shall not qualify for pension unless his duties and pay are regulated by the Government or under conditions determined by the Government."

65. A reading of Rule 12 of the Tamil Nadu Pension Rules, 1978, indicates that the “services” of a “Government servant” shall not qualify for pension unless the following conditions are satisfied :-

> “i) his duties and pay are regulated by the Government or
> ii) under conditions determined by the Government.”

66. A reading of Rule 12 (2) of Tamil Nadu Pension Rules, 1978, indicates that a “service”under the “Government” should be paid by the “Government” or a “ Local Fund Administered by the Government”. Rules 12(2) of the Tamil Nadu Pension Rules, 1978 reads as under:-

> “(2) For the purpose of sub-rule (1) the expression “service means service under the Government and paid by the Government from the “Consolidated Fundof the State”, or a “Local Fund administered by that Government” but does not include service in a “non-pensionable establishment” unless such service is treated as qualifying service by that Government”

67. As per the above Rule the expression “ service” means:-

i. service under the Government; and
ii. paid by the Government either :-
  a) from the “Consolidated Fundof the State”, or
  b) from a “Local Fund administered by that Government” .

68. The above definition excludes service in a “non-pensionable establishment” unless such service is treated as qualifying service by that Government. The Ruling of the Government under Rule 128 of the Fundamental Rules is required to be decided. These aspects are not forthcoming either in the affidavit filed in support of the present writ petition nor in the counter affidavit filed by the 2nd respondent.

69. Further, as per Sub Rule 5(a) to Rule 12 of Tamil Nadu Pension Rules, 1978, “Temporary Local Body employee” or State Government servant who have been appointed under the “State Government service” or “under any Local Body”, as the case may be, shall be allowed to counted towards qualifying service rendered under the respective “Local Body” or the “State

Government service", as the case may be, for the grant of pension by the "State Government" or "Local Body "from where he eventually retires in respect of the following two categories, namely:-

> "(i) Person who having been retrenched from the service of the Local Body or State Government, secures employment under the State Government or Local Body, as the case may be, either with or without interruption of service from the date of retrenchment;and
>
> (ii)Person who, while holding temporary post under the State Government or Local Body applies for a post under any Local Body or State Government, as the case may be, through proper channel or with proper permission of the administrative authority concerned.

70. Again the counter is silent on the status of the petitioner. As per sub-Rule 5(b) of Rule 12 the Tamil Nadu Pension Rules,1978, which reads as under:-

> a. The pensionary liability shall be shared between the respective Local Body and the Government, as the case may be, on the basis of length of qualifying service rendered under each of them.
>
> Provided that when a person retires on or after the 1st April 1987, the liability for pension including gratuity shall be borne in full by the respective Local Body or the State Government, as the case may be, under which such person has been permanently absorbed at the time of retirement.]

71. From a reading of the above mentioned Rules and G.O. Orders it appears that the petitioner could be classified as a Group D "Government servant" in view of G.O.Ms.No.370 dated 16.4.1989 read with Rule 2(3) of Tamil Nadu Government Servant Conduct Rules, 1978.

72. A "Government servant" whose services are placed by the

Government at the disposal of a company, corporation, organisation or a local authority is deemed to be a “Government servant” serving under the Government, notwithstanding that his salary is drawn from sources other than from the Consolidated Fund of the State.

73. The fact that the services of the petitioner was Government and regularized by the Government under various Government orders makes it clear that the petitioner was indeed a “Government servant”. If one looks in Rule 12 of Tamil Nadu Pension Rules, 1978, it is also quite clear that the petitioner was a “Government Servant” within the meaning of Rule 2(3) of the Tamil Nadu Government Servants’ Conduct Rules, 1973.

74. Though the Hon’ble Supreme Court in its recent dated 07.10.2021 in Union of India & Others v. IlmoDevi and another [2021 SCC OnLine SC 899] observed that part-time employees are not entitled to seek regularization as they are not working against any sanctioned post and that there cannot be any permanent continuance of part-time temporary employees, the fact of the matter in this case is that the Government has decided to treat the noon meal workers as permanent part time employees.

75. In SheoNarain Nagar & Ors. v. State of Uttar Pradesh &Ors., [(2018) 13 SCC 432], the Hon’ble Supreme Court taking note of 39(1)(d) of the Constitution of India as if they have no constitutional protection as envisaged in D.S. Nakara v. Union of India [D.S. Nakara v. Union of India, observed that “In heydays of life they are serving on exploitative terms with no guarantee of livelihood to be continued and in old age they are going to be destituted, there being no provision for pension, retiral benefits, etc. There is clear contravention of constitutional provisions and aspiration of downtrodden class. They do have equal rights and to make them equals they require protection and cannot be dealt with arbitrarily.

76. The Hon’ble Supreme Court held that this kind of treatment meted out is not only bad but equally unconstitutional and is denial of rights. This passage is applicable to the facts of the present case. The Government cannot be said to be satisfying its constitiutional goal by paying a token amount as special pension. Relevant portion from the said decision is extracted below:

> “ 7. When we consider the prevailing scenario, it is painful to note that the decision in

Umadevi (3) [State of Karnataka v. Umadevi(3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] has not been properly understood and rather wrongly applied by various State Governments. We have called for the data in the instant case to ensure as to how many employees were working on contract basis or ad hoc basis or daily-wage basis in different State departments. We can take judicial notice that widely aforesaid practice is being continued. Though this Court has emphasised that incumbents should be appointed on regular basis as per rules but new devise of making appointment on contract basis has been adopted, employment is offered on daily-wage basis, etc. in exploitative forms. This situation was not envisaged by Umadevi (3) [State of Karnataka v. Umadevi(3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] . The prime intendment of the decision was that the employment process should be by fair means and not by back door entry and in the available pay scale. That spirit of the Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] has been ignored and conveniently overlooked by various State Governments/authorities. We regretfully make the observation that Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] has not been implemented in its true spirit and has not been followed in its pith and substance. It is being used only as a tool for not regularising the services of incumbents. They are being continued in service without payment of due salary for which they are entitled on the basis of Articles 14, 16 read with (1983) 1 SCC 305 : 1983 SCC (L&S) 145 : AIR 1983 SC 130] , from cradle to grave. We have to strike a balance to really implement the ideology of Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] . Thus, the time has come to stop the situation where Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] can be permitted to be flouted, whereas, this Court has interdicted such employment way back in the year 2006. The employment cannot be on exploitative terms, whereas Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] laid down that there should not be back door entry and every post should be filled by regular employment, but a new device has been adopted for making appointment on payment of paltry system on contract/ad hoc basis or otherwise. This kind of action is not permissible when we consider the pith and substance of true spirit in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] .”

(* Article 39(1)(d))

77. Thus, unless it can be said that the petitioner was employed in a “non pensionable establishment” and the salary that was paid to the petitioner was out a of “local fund” simplicitor and/or “not out of consolidated fund of the State”, it cannot be straight away informed and said that the petitioner will not be eligible for Government Pension under the Tamil Nadu Pension Rules, 1978.

78. If the salary of the petitioner was paid out of “local fund administered by the Government” within the meaning of Rule 2 (k) of Tamil Nadu Pension Rules, 1978 and or from “consolidated fund of the State”, the petitioner will be eligible for pension.

79. The Noon Meal Scheme was a Government Scheme by various Government Bodies as detailed above. Currently, it is being implemented by the “Social Welfare Department” of the Government. Therefore, there may be no difficulty in concluding that petitioner was employed in a post in connection with the “affairs of the state”.

80. However, it is not clear whether the salary paid to the petitioner, was not paid out of the “local Fund administered by the Government” or out “ consolidated fund of the State” or “otherwise”. This would require a proper consideration by the respondents.

81. What is discernible is that the pay of the petitioner as a noon meal was regulated by the Government under G.O. No.370 dated 16.4.1989. The petitioner was employed by a Government Department namely Social Welfare Department. Therefore, the petitioner prima facie appears to be covered under the provisions of the Tamil Nadu Pension Rules, 1978 and is eligible for Government Pension.

82. Even if the salary of the petitioner was paid out of a " Local Fund", the respondents were duty bound to ensure the petitioner was entitled for a decent pension. This exercise has not been carried by the 2nd respondent. The respondents have also failed in this duty in protecting the interest of the petitioner under Articles 38,39, 41 & 42 of the Constitution of India. Payment of a meagre pension as token pension called as " Special Pension" is a tokenism.

83. It militates against the Directive Principles of State Policy under Article 38, Article 39,Article 41, Article 42 and 43 of the Constitution of India. They are reproduced below:

Sl. No.	Article	Description
1	Article 38	State to secure a social order for the promotion of welfare of the people.— 1 . The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life. 2 The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.]

Sl. No.	Article	Description
2	Article 39	Certain principles of policy to be followed by the State.—The State shall, in particular, direct its policy towards securing— (a) that the citizens, men and women equally, have the right to an adequate means of livelihood; (b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good; (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment; (d) that there is equal pay for equal work for both men and women; (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength; [(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.]
3	Article 41	Right to work, to education and to public assistance in certain cases.—The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.
4	Article 42	Provision for just and humane conditions of work and maternity relief.—The State shall make provision for securing just and humane conditions of work and for maternity relief.

Sl. No.	Article	Description
5	Article 43	Living wage, etc., for workers.—The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

84. The State has to be strived to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations. The State also has to endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

85. In The Government of Tamil Nadu, rep. by Secretary to Government, Public Works Department Vs. R.Kaliyamoorthy and etc. in W.A.No.158 of 2016 etc., batch, the Full Bench of this Court vide its order dated 03.12.2019 examined the scope of the Government pension under the Tamil Nadu Pension Rules, 1978. Relevant portion of the order are extracted below:-

> "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 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."

86. As the decision to pay special pension of a meagre amount is not inconsonance with the scheme under the Constitution of India. Payment of paltry such while inservice is itself contrary to the provisions under the Constitution. Payment of Paltry pension, post retirement also cannot be said to be in line with the promise and object sought to achieved under the Constitution of India.

87. The benefit of G.O.Ms.No.314 - Form (Pay Cell) Department dated 25.10.2017 which has been given by the Government of Tamil nadu by revising the existing Special Pension/Special Family Pension and Lumpsum payments for the Noon-Meal Workers, Anganwadi Workers and Village Panchayat Secretaries though noble is meager. It does not meet the promise under the constitution to its citizen who have the misfortune of not getting properly educated and were forced to accept and take up employment as Noon Meal Worker with a very low compensation. These worker's have spent their youth and strength service the Government in implementing the scheme. They desire a dignity in the evening of their life. So that they are not driven to poverty and scarcity.

88. In view of the above discussion, I am of the view that the impugned order passed by the third respondent is liable to be quashed. It is hereby quashed and the case is remitted back

to the third respondent to re-consider the case of the petitioner afresh in the light of the observation made herein.

89. The third respondent shall come to a proper conclusion after ascertaining the details from the available records as to the following:-

> "i) Whether the salary that was paid to the petitioner was from the "Local Fund" simplicitor"or from the "Local Fund Administered by the Government" as defined under Rule 2(k) of Tamil Nadu Pension Rules, 1978? or otherwise.
>
> ii) Whether the service of the petitioner would qualify as "service" within the meaning of 12(2) of Tamil Nadu Pension Rules, 1978;
>
> iii) Even if the petitioner not eligible for the grant of Government pension under the Tamil Nadu Pension Rule,1978 the third respondent is directed to liaise with the Government to revise the special pension payable to the petitioner by upgrading the same on par with the minumum pension drawn retired Government Servants under the Pension Rules by a keeping the objective of Artcile 37& 41 of the Constitution of India".

90. The said exercise shall be carried out by the second respondent within a period of six months from the date of receipt of a copy of this order and the difference of the amount to be arrived as pension whether as a regular pension or as special pension shall be paid within a period of one month thereafter and such enhanced pension shall be paid for the ensuing period and revised pension on par with the pension payable to other Government employees of the State of Tamil Nadu.

91. This writ petition is allowed with the above observation. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

kkd

To

1. The Principal Secretary to Government,
   Government of Tamil Nadu,
   Social Welfare & Nutritious Meal Department,
   Secretariat, Fort St.George,
   Chennai 600 009.

2. The Director,
   Social Welfare & Nutritious Meal Department,
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   Chindadripet, Chennai 600 002.

+1cc to M/s.Lesi Saravanan, Advocate, S.R.No.1491

Pre-delivery Order in
W.P. No.8917 of 2017

KSM(CO)
SU(07/02/2022)