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W.P.Nos. 26122 to 26124 of 2017



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos. 26122 to 26124 of 2017

and

W.M.P.Nos. 27756 to 27761, 27758 to 27761 of 2017

1. P. Arumugam

.. Petitioner
in W.P.No. 26122 of

2017

2. N. Viswanathan

.. Petitioner
in W.P.No. 26123 of

2017

3.M. Kala

.. Petitioner
in W.P.No. 26124 of

2017

vs

1. State of Tamil Nadu

Represented by its Secretary to Government,
Rural Development and Panchayat Raj Department,
Fort St. George, Chennai -9.

2. Director, Commissionerate of Rural Development and
Panchayat Raj,
Panagal Building, Chennai – 15.

3. District Collector,
Thiruvallur District,
Thiruvallur.



... Respondents
in all WPs

Prayer in all WPs: Writ Petitions filed Under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the first respondent herein in G.O.Ms.No. 77 Rural Development (PA-4) department dated 12.07.2013 and quash the modification issued in para 4 (b) of the said G.O. insisting full time service as Panchayat clerk for the purpose of pension and consequently direct the respondents herein to count 50 % of the service rendered by the petitioner herein in the post of Panchayat Clerk during 16-03-1979 to 25-12-1990, 01.09.1979 to 26.12.1990 & 01.02.1984 to 07.03.1999 along with their regular service and sanction revised pension and pay arrears of difference in pension and other monetary benefits with due interest.

For Petitioners : Mrs. C. Nisha
for M/S. V. R. Rajasekaran

For Respondents : Mrs. E. Indhumathi
Government Advocate
for R1 to R3

COMMON ORDER

The writs on hand has been instituted to quash the Government Order issued in G.O.Ms.No. 77 Rural Development Department dated 12.07.2013, and direct the respondents to count 50 percent of the services rendered by the petitioners in the post of part time panchayat clerk along with their regular services.



2. The petitioners were initially appointed as part time panchayat clerk on 16.03.1979, 01.09.1979 & 01.02.1984 respectively and served as such up to 25.12.1990, 26.12.1990 & 07.03.1999. Thereafter, they were appointed as Junior Assistant on regular basis and retired from service on 31.03.2017 and 30.04.2017. It is not in dispute that the regular services of the writ petitioners in the post of junior assistant from 26.12.1990 to 31.03.2017, 27.12.1990 to 31.03.2017 and 08.03.1999 to 30.04.2017 respectively and was taken into consideration as qualifying services for the purpose of grant of pension and accordingly the writ petitioners are receiving pension under the Tamil Nadu Pension Rules 1978.

3. The grievances of the writ petitioners are that the services rendered by them as part time panchayat clerks was not taken into consideration for the purpose of recurring the 50% of qualifying services under Rule 11 (4) of the Tamil Nadu Pension Rules, 1978. Thus the petitioners are constrained to challenge the Government Order issued in G.O.Ms. No. 77, restricting the part time panchayat clerk from availing the benefits of 50 % counting of the services.



4. The learned counsel for the petitioners mainly contended that the similar relief has been granted in favour of other persons based on the orders of the High Court, Madurai Bench in G.O.Ms. No. 99 Rural Development and Panchayat Raj (E5) Department dated 27.08.2022. When the similar relief is granted to the other persons, and the said benefit should be extended to the writ petitioners also.

5. In this regard, with reference to the Government Order issued in G.O.Ms. No. 77 and G.O.Ms.No.39 Rural Development and Panchayat Raj Department dated 13.06.2011, this court has elaborately considered the scope of extending the benefit of counting of the 50 % of the services to part time panchayat clerks. In W.P.No. 9562 of 2014 dated 20.07.2012 , the relevant paragraphs are extracted hereunder :

6. The respondents relied on Rule 11(2) of the Pension Rules, which is added as per G.O.Ms.No.283, Finance (Pension) Department, dated 15.04.1996, which reads as under:-

Rule 11(2): "Half of the service paid from contingencies shall be allowed to count towards qualifying service for pension along with regular subject to the following conditions:

(i) Service paid from contingencies shall be in a job involving whole time employment and not part-time for a portion of the day.

(ii) Service paid from contingencies shall be in a



type of work or job for which regular posts could have been sanctioned, for example Chowkidar.

(iii) Service shall be for which the payment is made out on monthly or daily rates computed and paid on a monthly basis and which though not analogous to the regular scale of pay, shall bear some relation in the matter of pay to those being paid for similar jobs being performed by staff in regular establishments.

(iv) Service paid from contingencies shall be continuous and followed by absorption in regular employment without a break.

(v) Subject to the above conditions being fulfilled, the weightage for past service paid from contingencies shall be limited to the period after the 1st January 1961 for which authentic records of service may be available.

(vi) Pension or revised pension admissible as the case shall be paid from the 23rd June 1988."

7. The Government in G.O.(Ms.) No.408, Finance (Pay Cell) Department, dated 25.08.2009 has issued the following instructions under which 50% of the services rendered in non-provincialised establishment/ Service under consolidated pay, Honorarium and Daily Wages can be taken into account for calculation of pensionary benefit of those who were absorbed into Government service.

(i) That the services rendered under consolidated pay, Honorarium and Daily Wages should be full time job.

(ii) That the employees should have absorbed in to Government Service in continuation of initial appointment in non-provincialised establishment



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or under consolidated pay or Honorarium or Daily Wages in Government Departments.

(iii) That such employees should have absorbed into Government Service prior to 01.04.2003 without break in service.

8. Citing G.O.(Ms.) No.408, dated 25.08.2009 as reference, the Government in G.O.(Ms.) No.39, Rural Development and Panchayat Raj Department, dated 13.06.2011, have ordered that 50% of the services rendered in the post of part-time/Full Time Panchayat Assistants by an employee promoted to the cadre of Junior Assistant before 01.04.2003, be taken into account for calculating the pensionary benefits of such employees.

Accordingly, some of the employees who were initially appointed as part-

time/Full Time Panchayat Assistants and were promoted to the cadre of Junior Assistant and higher cadres prior to 01.04.2003, were sanctioned pensionary benefits, as per the order issued in G.O.(Ms.) No.39, dated 13.06.2011.

9. The Accountant General of Tamil Nadu/fifth respondent brought to the notice of the Government that the orders issued in G.O.(Ms.) No.39, dated 13.06.2011, for taking into account 50% of the services rendered in the post of part-time Clerks can be accepted, subject to the condition that the services rendered in non-provincialised establishment and the service under consolidated pay, Honorarium and Daily Wages should be full time job is deleted from G.O.(Ms.) No.408, dated 25.08.2009. Therefore, the Government issued G.O.(Rt.) No.77, dated 12.07.2013, amending the orders issued in G.O.(Ms.) No.39, dated 13.06.2011 and the



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following orders were issued afresh regarding the extension of concession of taking into account the 50% of services rendered in the post of part-time/full time Panchayat Assistants by an employee promoted to the cadre of Junior Assistant, before 01.04.2003, for calculating the pensionary benefits.

(i) In the case of an employee who was promoted either from the posts of Panchayat Assistant (Grade-I) (Full Time) or from Panchayat Assistant (Grade-II) (Full Time) or from Panchayat Clerk (Full Time), to the cadre of Junior Assistant prior to 01.04.2003 without break in service, 50% of the services rendered by such employees after 01.01.1961, in the posts of Panchayat Assistant (Grade-I) (Full Time) or Panchayat Assistant (Grade-II) (Full Time) or in Panchayat Clerk (Full Time) may be taken into account for sanction of pensionary benefits to such employees.

(ii) The part-time services rendered in the posts of Panchayat Assistant (Grade-I) or Panchayat Assistant (Grade-II) or Panchayat Clerk, cannot be taken into account for pensionary benefits, as ordered in G.O.(Rt.) No.39.

(iii) The orders issued above shall not affect those who already benefited as per G.O.(Rt.) No.39, dated 13.06.2011.

10. In this context, the respondents have stated that the petitioner herein is not eligible for counting 50% of the services rendered by him in the post of part-time Clerk for the period from 05.01.1980 to 15.11.1999, since the service is not on full time basis. Hence, the request of the petitioner for revision of pensionary benefits as per G.O. (Rt.) No.39, dated 13.06.2011, is liable



to be rejected, consequent to the orders issued in G.O.(Rt.) No.77, dated 12.07.2013.

11. The respondents have stated that G.O. (Rt.) No.39, dated 13.06.2011 was amended as per the orders passed in G.O.(Rt.) No.77, dated 12.07.2013, since the order issued in G.O. (Rt.) No.39, dated 13.06.2011 is ultra vires the Rule 11(2) of Pension Rules and G.O.(Ms.) No.408, dated 25.08.2009, based on which the said Government Order was issued.

12. The respondents have stated that "Defacto Doctrine" shall invariably apply to those who were benefited as per the orders issued in G.O. (Rt.) No.39, dated 13.06.2011 and this good gesture shown by the Government in favour of those who were already benefited prior to the issue of G.O.(Rt.) No.77, dated 12.07.2013, shall in no way confer any legitimate right for those who worked as part-time Clerks on part-time basis like the petitioner, to claim benefits on par with those already benefited as per G.O. (Rt.) No.39, dated 13.06.2011. Thus, the claim of the petitioner that the right has already accrued to him to claim benefits as per G.O. (Rt.) No.39, dated 13.06.2011 shall have no effect on him and is liable to be rejected.

13. The learned counsel for the petitioner, with reference to the facts narrated in the affidavit filed in support of this Writ Petition, contended that the Government extended the benefit of counting 50% of the part-time Panchayat Clerk services in G.O. (Rt.) No.39, dated 13.06.2011. No doubt, the Government overturned the earlier Government Order and issued a modified order in G.O.(Rt.) No.77, dated 12.07.2013. However, the said Government Order was set aside by this Court and the said order passed in the Writ



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Petition was affirmed by the Division Bench of this Court.

14. In this regard, the learned counsel for the petitioner reiterated that originally the Director of Rural Development and Panchayat Raj Department recommended the case of the part-time Panchayat Clerks for counting 50% of the services, in his proceedings dated 27.12.2010, and pursuant to the recommendations, the Government issued G.O. (Rt.) No.39, dated 13.06.2011. However, the said Government Order was modified in G.O.(Rt.) No.77, dated 12.07.2013. Thereafter, the aggrieved person, one Mr.J.Sivakumar, approached this Court and this Court, by an order dated 19.11.2013 passed in W.P. (MD) No.16711 of 2013, allowed the Writ Petition and directed to count 50% of the services rendered by the petitioner therein as part-time Panchayat Clerk and subsequent services rendered by him as full time regular employee, for the purpose of pensionary benefits.

However, in the said Writ Petition, G.O.(Rt.) No.77, dated 12.07.2013 was not challenged. The order passed in the Writ Petition was challenged by the Secretary, Rural Development Department in W.A. (MD) No.361 of 2016 and the Division Bench passed the Judgement on 03.06.2016, dismissing the Writ Appeal and confirmed the order passed by the learned single Judge.

15. The learned counsel for the petitioner drew the attention of this Court with reference to another Judgement of the Division Bench dated 11.04.2016 passed in W.A.No.431 of 2016, wherein the Judgement passed in W.A. (MD) No.361 of 2016, dated 03.06.2016 was followed. Yet another Writ Appeal was decided by the Division Bench of this Court in W.A.No.1111 of



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2016, dated 22.03.2018. Following the Division Bench orders, a learned single Judge (myself SMSJ) also passed an order on 28.04.2018 in W.P.Nos.11235 and 11236 of 2018, wherein, more specifically, the Judgement of the Division Bench of this Court passed in W.A.No.612 of 2016, dated 24.06.2016 was followed.

16. In view of the conflicting Judgements of the Division Benches of this Court, in this line, more specifically, regarding interpretation of amended Rule 11(4) of the Pension Rules, the matter was referred to the Hon'ble Full Bench of this Court in the case of Government of Tamil Nadu, Public Works Department Vs. R.Kaliyamoorthy passed in W.A.No.158 of 2016, etc., batch and the Hon'ble Full Bench delivered a Judgement on 03.12.2019, which reads as follows:-

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

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

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



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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."

17. The Hon'ble Full Bench held that the amended Rule 11(4) is upheld and the said Rule is to be followed scrupulously in its letter and spirit. Thus, the Rule, as it is, should be implemented for the purpose of extending the benefit of counting 50% of the services and all other earlier Judgements granting benefits contrary to the spirit of Rule 11 cannot be relied on as precedent for the purpose of granting any further relief. Thus, the Full Bench Judgement is to be followed as a precedent and more specifically Rule 11 which contemplates qualifying service, is to be followed in its letter and spirit for the purpose of extending the benefit of counting 50% of the services to the



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eligible employees for granting pensionary benefits.

18. The learned Government Advocate relied on the counter statements filed by the respondents and contended that the Judgements of the Division Bench relied on by the learned counsel for the petitioner were passed in the years 2016 and 2018 and subsequent to those Judgements, another Division Bench of this Court, in a batch of Writ Appeals in W.A.(MD) Nos.1629 of 2018, etc., elaborately considered the principles and allowed the Writ Appeals on 26.02.2021, which reveals the subject as a whole, more specifically, with reference to the services of the part-time Panchayat Clerks. The learned Government Advocate relied on the following paragraphs of the Judgement of the Division Bench, which reads as under:-

"20. Much reliance has been made to Rule 11(a) read with Rule 2(o) of the Tamil Nadu Pension Rules, 1978. These Rules are not applicable to the services of Talaiyaris, being in non-pensionable establishment and part-time and that too not in a cadre post. As per Rule 11(4), there must be whole-time employment. Similarly, there shall not be any break, which is in existence. Insofar as the other set of employees are concerned, viz., Village Officers (Karnams), we may appropriately quote Rule 16 of the Tamil Nadu Village Servants Service Rules, 1980. Even as per Rule 16 of the said Rules, the post of Talaiyari being non-pensionable, they are not entitled.



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21. We are quite convinced with the entitlement of the respondents in the light of the discussions made. Our above said conclusion is also strengthened by the judgment of the Full Bench of this Court in *Government of Tamil Nadu and others v. R.Kaliyamoorthy* reported in 2019(6) CTC 705, which could be seen through the following paragraphs:~ "29. Having regard to the above rule position, we proceed to examine the claim of the writ petitioners.

Admittedly, the writ petitioners herein were appointed in various departments of the Government in non-provincialised services, on consolidated pay, honorarium or daily wage basis, on contingency basis. They were not appointed against any sanctioned post or regular post. For having rendered such service, they were paid daily wage or wages from the contingency fund. To be specific, the writ petitioners were not appointed in a cadre post whether on temporary or permanent basis against vacancies which were duly notified. They were appointed on daily wage basis prior to 01.04.2003 on various dates. The service of some of the petitioners were also admittedly regularised after 01.04.2003 in a cadre post as and when permanent vacancies arose or had been notified. The writ petitioners therefore claimed that they are entitled to count half of the service rendered by them on daily



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wage basis or as contingent employees or on honorarium basis or in non-provincialised services etc. along with the regular service as has been contemplated under Rule 11 (4). The petitioners also claimed equity on par with one Murugan, in whose favour, the Government passed G.O. (D) No.332, Environment and Forest Department dated 19.11.2008 by which the service rendered by the said Murugan, on daily wage basis for about 20 years was ordered to be counted along with his regular service rendered by him till his retirement on 30.09.2005. In other words, even though the service of the said Murugan was regularised after 01.04.2003, yet, as a special case, the Government issued G.O. (D) No.332, Environment and Forest Department dated 19.11.2008 and ordered to count half of the service rendered by him on daily wage basis along with his regular service. This had apparently sparked and/or kick-started a volley of writ petitions to be filed before this Court at the instance of persons similarly placed like the writ petitioners in this batch. This Court had also, based on the order passed by the Government in G.O. (D) No.332, Environment and Forest Department dated 19.11.2008 directed the Government to count half of the service rendered by the persons similarly placed like the petitioners along with their regular service, purportedly on the ground of equity.



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The State Government filed writ appeals before the Division Bench of this Court, as against few cases in which such directions were issued by the single Bench.

...

31. On behalf of the writ petitioners, it was contended that the writ petitioners have been temporarily employed with nomenclature such as daily wage employees, on consolidated pay or on honorarium basis etc. and as per Rule 11 (1) the service rendered by them in such temporary employment has to be counted along with the regular service in a cadre post. We wish to observe that the word temporary or officiating service employed in Rule 11 (1) is referable to -temporary appointment-contemplated under Rule 10 (a) (i) of Tamil Nadu State and Subordinate Services Rules. On a reading of Rule 10 (a)

(i), the wordings employed thereof are explicit and clear. A temporary appointment made to a government service is the one which is made in a post borne on the cadre of a service, class or category, meaning thereby such temporary appointment is made in an existing vacancy or notified vacancy. Rule 10 (a) (i) further makes the position clear that such appointment is permissible to be made by the appointing authority in case of emergency to fill the vacancy, in



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public interest. For such appointment, the appointing authority has to form an opinion that the procedural process for appointment to the cadre post will take some time and that such delay would prejudice the public interest. In such circumstances, Rule 10 (a) (i) can be invoked for appointing a candidate on temporary appointment in a sanctioned post. The service of such person, though appointed on temporary appointment can later be regularised by following the due procedure. The significance for invoking Rule 10 (a) (i), apart from public interest, is the existence of sanctioned post or vacancy in a post borne on the cadre of a service, class or category. Thus, Rule 10 (a) (i) cannot be invoked in the absence of an existing vacancy in a cadre post. Therefore, we are of the view that the temporary appointment mentioned in Rule 11 of the Pension Rules, in the realm of Service Law Jurisprudence, is referable only to Rule 10 (a) (i) of the Tamil Nadu State and Subordinate Services. The writ petitioners were however appointed on daily wage basis on payment of honorarium or consolidated pay and did not come within the fold of Rule 10 (a) (i) of the Tamil Nadu State and Subordinate Services Rules. Only the appointments made under the provisions of Rule 10 (a) (i) of the aforesaid Rules alone can be considered as temporary appointment. Therefore, the submissions made on behalf of the



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petitioners relying upon Rule 3 (o) has to be rejected. Admittedly the Writ Petitioners were not appointed invoking Rule 10(a)(i).

.....

34. Rule 11 (4) of the Tamil Nadu Pension Rules, 1978 confers an additional benefit to such class of Government servants to include half of the service rendered in the above capacity for determining qualifying service provided their service was regularised before 01.04.2003. Rule 11 (4) by itself is not intended to deny pension to respondents/writ petitioners if appointment was prior to 01.04.2003 in the cadre post, whether temporary or permanent.

35. Rule 11 (4) merely provides a method for determining the ? qualifying service? for government employees who were absorbed into service before cut-off.

36. The significance of Rule 11 (4) is to bring the service of a government employee / servant within the realm of qualifying service to count half of the service rendered under the State Government in non-provisionalised service, consolidated pay, honorarium or daily wages basis before 1st April 2003 for retirement benefits, if the absorption to service was before 01.04.2003.

37. Rule 11 (4) of the Tamil Nadu Pension Rules, 1978 allows a



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Government employee / servant appointed in a cadre post before 01.04.2003 as per the Rules whether in temporary or permanent capacity to include 50% of the service rendered in (i) non~provincialised services; (ii) Consolidated pay; (iii) honorarium; or (iv) daily wage basis along with regular service subject to conditions stipulated therein.

38. For instance if a government employee/servant was appointed and absorbed between the cut off dates i.e. 01.01.1961 and 01.04.2003, then he/she will be entitled to include half of the service rendered under the State Government in (i) non~provincialised services; (ii) Consolidated pay; (iii) honorarium; or (iv) daily wage basis into his/her services for determination of qualifying service.

39. On the other hand, if a Government employee / servant was not absorbed between the aforesaid cut off dates, he/she will not be entitled to include half of the service rendered under the State Government in (i) non~provincialised services; (ii) Consolidated pay; (iii) honorarium; or (iv) daily wage basis into his/her services even though such person may be entitled to Government Pension under the Rule if he/she was appointed in a cadre post on or before 01.04.2003 but was absorbed after the said date.



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40. For example, if a person is appointed prior to 01.04.2003 in a non~provincialised service or on consolidated pay or on honorarium or daily wage basis and later to a cadre post on temporary basis under Rule 10

(a) (i) of The Tamil Nadu State and Subordinate Service Rules before 01.04.2003 and such service is regularised after 01/04/2003, such Government employee is eligible for Government Pension under the Tamil Nadu Pension Rules but at the same time would not be eligible to include half of services rendered in such capacity viz., i) Non~provincialised Services ii) Consolidated pay; iii) honorarium; or iv) daily wage basis to his regular service.

41. Thus, a government servant who may have been appointed before the cut~off date of 31.03.2003 may be entitled to government pension if he satisfies the requirement of qualifying service in Rule 3(o) of the Tamil Nadu Pension Rules, 1978. However, such a person will not be entitled to add half of the past service held in any one of the four capacity mentioned above prior to 01.04.2003 since his regularisation is subsequent to the cut off date. Therefore, only those who were appointed prior to 01.04.2003 whether as temporary appointment but in accordance with Rule 10 (a) (i) alone will be entitled to get pension.



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42. *The cut off date i.e. on or after 01.04.2003 in proviso to Rule 2 of the Tamil Nadu Pension Rules, 1978 will not per se bar a person from getting pension if such a person had joined the service in accordance with the provisions of Tamil Nadu State and Subordinate Service Rules i.e in the cadre whether on temporary or permanent basis. Services rendered before the cut off date of 01.04.2003, can be added to the regular service only if the service was regularised before the said date for determining the qualifying service. Therefore, in our opinion, it would be appropriate to say that Rule 11 (4) gives the meaning of qualifying service rather than giving significance to cut off date. Therefore, it is clear that only if the appointment is in accordance with the Rules and such appointment is prior to 01.04.2003, 50% of the past service can be added along with the regular service.*

.....

44. *The aforesaid Judgment of the Honourable Supreme Court would squarely apply to this case. Merely because this Court has passed multiple number of orders in favour of some of the similarly placed persons like the writ petitioners, it will not operate as res judicata or it will preclude the State Government from questioning those orders in a parallel or similar proceedings. In such circumstances, we are of the view that*



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the orders, hitherto passed by this Court, both single Bench or the Division Bench will not operate as a bar for maintaining these writ appeals or writ petitions or those orders will not be considered as the one which laid down any binding precedent to be followed in other cases. An order, which was not passed in accordance with the statutory provisions, need not be followed by the Court at the instance of similarly placed persons."

The sum and substance of the decision rendered, which in our view, is that a Government Servant is entitled for reckoning the half of the past services, even while working in non-provincialised service, or on consolidated pay or on honorarium or daily wage basis only when there exists a cadre post. Rule 11 of the Tamil Nadu Pension Rules, 1978, merely facilitate the reckoning of the past services of a Government servants subject to the conditions stipulated therein.

26. Having considered the entire issues involved, we also find that there is no application of Article 14 of the Constitution of India by comparing the respondents with those who got the relief albeit without taking note of the relevant provisions of law. Granting the relief would amount to setting aside two pension Rules without even a challenge especially when the respondents got the benefit



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of regular employment and permanent posts under the subsequent orders passed, on their request.

27. In the result, the appeals filed by the Government of Tamil Nadu stand allowed by setting aside the orders passed by the learned Single Judge and consequently, the appeal filed by the Writ Petitioner in W.A.(MD) No.831 of 2020 stands dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed."

19. The learned Government Advocate further made a submission that the aforesaid Judgement of the Division Bench was followed by a learned single Judge in W.P.Nos.6862 and 6855 of 2022, dated 08.04.2022. Thus, the said Judgement of the Division Bench issued, relying on the Judgement of the Hon'ble Full Bench, is to be followed in this Writ Petition.

Analysis:-

20. It is an admitted fact that the petitioner was appointed as part-time Panchayat Clerk. This Court, even before the Judgement of the Division Bench dated 26.02.2021, considered the nature of services with reference to the Service Rules as far as part-time Panchayat Clerks are concerned in W.P.

(MD) No.20246 of 2013, dated 22.07.2019.

21. Considering the Judgements referred in the aforementioned paragraphs, it is clear that the Judgements of the Division Benches passed during the years 2016 and 2018 were over-ruled by the Hon'ble Full Bench 24/35 of this Court in the case R.Kaliyamoorthy (cited supra). Thus, the



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Judgement of the Hon'ble Full Bench is to be followed for the purpose of extending the benefit of Rule 11(4) of the Pension Rules.

22. Even regarding the application of equality clause under Article 14 of the Constitution of India, the Hon'ble Supreme Court of India in the case of *Dkshin Haryana Bijli Vitran Nigam and others Vs. Bachan Singh*, reported in (2009) 14 SCC 793 held that "in other words, the Supreme Court applied Article 14 only after finding that the employee was actually entitled in law for the benefit that he was seeking. The Supreme Court did not apply Article 14 blindfold, merely because other similarly placed employees got a benefit. Therefore, the Court has a duty before invoking Article 14 to see whether the employee is entitled to the benefit he was seeking".

23. The normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending the benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. However, this principle is subject to well recognized exceptions in the form of delays and laches as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts, who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim the benefit of the Judgement rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delay, and/or the acquiescence, would be a valid ground to dismiss their claim.



24. *The above principle reiterated in the case of State of Uttar Pradesh Vs. Aravind Kumar Shrivastava reported in 2015 (1) SCC 347, is to be applied only to cases where the employees are legitimately entitled to some benefits but it was denied to them either wrongly or on a wrong interpretation of the Rules/Circulars.*

25. *Thus, Courts are bound to independently consider the fair circumstances and the applications of statutes and rules even in respect of the persons claiming similar benefits. Thus, the principles laid down in Aravind Kumar Shrivastava (cited supra) could be invoked only in two types of cases namely (1) cases of wrongful denial of a rightful benefits, or (2) cases of wrongful denial of a doubtful benefit. They cannot be applied to a rightful denial of a benefit, which is not due to them.*

26. *No doubt, consistency helps the parties to a litigation to know where they stand. But, when it is brought to the notice of the Court that on most of the earlier occasions, several similarly placed employees have obtained orders on the ground that the issue is already covered by a decision of this Court and that it was only in this manner that several employees got a benefit that was not legitimately due to them, the Court cannot shut its eyes and choose to prefer maintenance of discipline rather than upholding public interest.*

27. *As a matter of fact, the greatness of the Court lies only in its courage and ability to correct its mistakes. Justice is more precious than discipline. This was the principle that the Supreme Court highlighted in A.R.Antulay Vs. R.S.Nayak, reported in AIR 1988 SC 1531. It was observed in the said decision that "in rectifying an error, no personal inhibitions should debar the Court*



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because no person should suffer by reason of any mistake of the Court." The Supreme Court focused on the elementary rule of justice that no party should suffer due to the mistake of the Court. Therefore, this Court should not feel shackled either by the rules of procedure or by the principles of propriety, when it is so glaring that a gross injustice has been done to the State (1) by Writ Petitions getting allowed at the stage of admission, and (2) by getting those Orders implemented under threat of contempt. This is especially so when the earliest decision that was followed in all other cases, did not decide the scale of pay to be granted for Selection and Special Grades. There could be no equality in illegality. An illegality will not undergo a metamorphosis and become legal, merely because it received the seal of approval of a Court of law. Article 14 is a positive concept and that it cannot be enforced in a negative manner. If an illegality or irregularity has been committed in favour of any individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior Court for repeating or multiplying the same irregularity or illegality or for passing wrong orders.

28. In similar circumstances, in the case of P.Singaravelan and others Vs. The District Collector, Tiruppur reported in (2020) 3 SCC 133, the Hon'ble Supreme Held as follows:-

"7. Applying these observations to the present case, it is clear that there has been no pronouncement by this Court constituting the law of the land as to the interpretation of G.O.Ms.No.162. In such a situation, it is open for us to proceed to decide the instant appeals



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uninfluenced by the prior orders of this Court dismissing SLPs against the grant of relief to drivers placed similarly as the Appellants herein.

24. Thus, it is evident that the Appellants cannot claim the Selection Grade and Special Grade Scales of pay of Rs.5000-8000 and Rs.5500-9000 respectively, solely on the strength of earlier decisions of the High Court, showing how they, themselves, are entitled to such benefit in the first place. In such a situation, we are of the considered view that the Appellants can only be granted the benefit of the Selection Grade and Special Grade scales of pay to which they are lawfully entitled in terms of G.O.Ms.No.162, i.e. Rs.4000-6000 and Rs.4300-6000 respectively."

29. Keeping in mind the principles and the Judgements elaborately discussed in the aforementioned paragraphs, the admitted fact in the case on hand is that the petitioner was appointed as part-time Panchayat Clerk and subsequently appointed as Panchayat Assistant and thereafter as Junior Assistant on regular basis and retired from services. It is further admitted that the regular services rendered by the petitioner was already taken into consideration for the purpose of grant of pensionary benefits and he had received all such benefits. The grievance is that 50% of the part-time Panchayat Clerk services were not taken into consideration, for the purpose of reckoning the qualifying service for grant of pensionary benefits.



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30. Rule 11(2)(i) of the Pension Rules contemplates that half of the services shall be counted only in a job involving whole time employment and not part-time. In the present case, even in the affidavit filed in support of the Writ Petition, the petitioner has stated that he was appointed as part-time Panchayat Clerk. The Hon'ble Full Bench of this Court also held that Rule 11 is to be followed scrupulously for the purpose of extending the benefit of counting 50% of the services to the temporary/daily wages/consolidated pay employees.

31. This being the factum established, the Judgements relied on by the learned counsel for the petitioner are of no avail to them, as the Hon'ble Full Bench of this Court held that Rule 11 and Rule 11(4) of the Pension Rules is to be followed scrupulously for the purpose of counting 50% of the services rendered by the employees. After the Full Bench Judgement, another Division Bench of the Madurai Bench of this Court, in a batch of Writ Appeals in W.A.(MD) Nos.1629 of 2018, etc., delivered the Judgement on 26.02.2021, dismissing all the Writ Appeals filed by the part-time Panchayat Clerks seeking the benefit of counting 50% of the services.

32. Therefore, this Court is of the considered opinion that even based on the Judgement of the Hon'ble Full Bench and the subsequent Judgement of the Hon'ble Division Bench and independently applying the principles to be followed in such circumstances by the Court, as discussed above, the relief as such sought for in this Writ Petition cannot be granted.

33. Beyond all the Judgements referred above, as emphasized by the Apex Court of India,



Article 14 is to be applied only if the claim is in accordance with law, but not otherwise. Thus, on independent application of facts and applying the principles of law to be followed and therefore, the case of the writ petitioner fails.

34. With the above observations, the Writ Petition stands dismissed.'

6. As far as the orders passed in G.O.Ms. 99 Rural Development and Panchayat Raj Department dated 27.08.2022, the said Government Order cannot be taken into consideration since the Hon'ble Full Bench and the subsequent Hon'ble Division Benches have categorically held that part time panchayat clerks are not eligible for counting of 50 % of the services since it is not permissible under Rule 11 (2) (a) of the Tamil Nadu Pension Rules, 1978.

7. When the Tamil Nadu Pension Rules stipulates that service paid from contingencies shall be in a job involving whole time employment and not part time for a portion of the day, then part time panchayat clerks are not eligible for counting of 50 % of the services as per the rules in force. Therefore, the erroneous Government Orders if any passed cannot be followed in a routine manner by the Courts. The Courts are expected to



apply its mind and accordingly consider the relief. Contrarily court cannot issue direction to consider the representation or to follow the Government Order in a mechanical way, which are all running counter to the statute and rules and also with the judgments passed in that regard.

8. With reference to principles of equality clause under Article 14 of the Constitution of India, the Hon'ble Division Bench of this Court has held in the case of ***Director of Sericulture Department, Salem and Others v. K.Kumar and Others***, reported in 2015(4) CTC 241:

34. It is true that consistency helps the parties to a litigation to know where they stand. But, when it is brought to the notice of the Court that on most of the earlier occasions, several similarly placed employees obtained orders at the stage of admission, on the ground that the issue is already covered by a decision of this Court and that it was only in this manner that several employees got a benefit that was not legitimately due to them, the Court cannot shut its eyes and choose to prefer maintenance of discipline rather than upholding public interest.

35. As a matter of fact, the greatness of the Court lies only in its courage and ability to correct its mistakes. Justice is more precious than discipline. This was the principle that the Supreme Court highlighted in [A.R.Antulay vs. R.S.Nayak](#) [AIR 1988 SC 1531]. It was observed in the said decision that "in rectifying an error, no personal inhibitions should debar the Court because no person should suffer by reason of any



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mistake of the Court." The Supreme Court focused on the elementary rule of justice that no party should suffer due to the mistake of the Court. Therefore, this Court should not feel shackled either by the rules of procedure or by the principles of propriety, when it is so glaring that a gross injustice has been done to the State (1) by writ petitions getting allowed at the stage of admission and (2) by getting those orders implemented under threat of contempt. This is especially so when the earliest decision that was followed in all other cases, did not decide the scale of pay to be granted for Selection and Special Grades. Hence, the second contention of the writ petitioners is also liable to be rejected.

CONTENTION 3:

41. In [Union of India v. Kartick Chandra Mondal](#) [(2010) (2) SCC 422], the Supreme Court, relying upon its previous decisions in various cases including the one in [State of Bihar v. Upendra Narayan Singh](#) [(2009) 5 SCC 69], held that [Article 14](#) is a positive concept and that it cannot be enforced in a negative manner. The Court further held that if an illegality or irregularity has been committed in favour of any individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior Court for repeating or multiplying the same irregularity or illegality or for passing a wrong order. Interestingly, the decision of the Supreme Court in [Kartick Chandra Mondal](#) was subsequent to the decision in [Maharaj Krishan Bhatt](#) and the decision in [Maharaj Krishan Bhatt](#) is also referred to in [Kartick Chandra Mondal](#).



9. The Hon'ble Supreme Court of India in the case of ***Basawaraj and another vs Special Land Acquisition Officer*** reported in 2013 14 SCC 81

held that

It is a settled legal proposition that [Article 14](#) of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a Judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, [Article 14](#) cannot be stretched too far for otherwise it would make functioning of administration impossible. (Vide: [Chandigarh Administration & Anr. v. Jagjit Singh & Anr.](#), AIR 1995 SC 705, [M/s. Anand Button Ltd. v. State of Haryana & Ors.](#), AIR 2005 SC 565; [K.K. Bhalla v. State of M.P. & Ors.](#), AIR 2006 SC 898; and [Fuljit Kaur v. State of Punjab](#), AIR 2010 SC 1937).



10. In view of the principles laid down by the Hon'ble Supreme Court, such certain erroneous orders cannot be followed by the Courts in a routine manner and mistake or error cannot be continued in perpetuity.

11. In the present case, the scope of extending the benefit of 50 % of counting services under Rule 11 (4) for the part time employees has already been decided by the Courts and therefore extending the other Government Orders in this regard would not arise at all. In view of the fact that part time panchayat clerks are not eligible for counting of 50 % of the services in view of the Rule 11(2)(1) of the Tamil Nadu Pension Rules, the said benefit cannot be extended to the writ petitioners and consequently, the writ petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

14.11.2022

mrn

Index : Yes / No

Speaking order / Non-Speaking order

To

1. The Secretary to Government,
State of Tamil Nadu
Rural Development and Panchayat Raj Department,
Fort St. George, Chennai -9.
2. Director, Commissionerate of Rural Development and
Panchayat Raj,
Panagal Building, Chennai – 15.



3. District Collector,
Thiruvallur District,
Thiruvallur.

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W.P.Nos. 26122 to 26124 of 20



S.M.SUBRAMANIAM, J.

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W.P.Nos. 26122 to 26124 of 2017



W.P.Nos. 26122 to 26124 of 2017
and
W.M.P.Nos. 27756 to 27761, 27758 to 27761 of 2017

14.11.2022