



W.P.Nos.889, 891 and 894 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
20.07.2023	31.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.Nos.889, 891 and 894 of 2023

- | | | |
|------------------|-----|---------------------------------------|
| 1. M. Manickam | ... | Petitioner
[in W.P.No.889 of 2023] |
| 2. M. Baby | ... | Petitioner
[in W.P.No.891 of 2023] |
| 3. N. Anbazhagan | ... | Petitioner
[in W.P.No.894 of 2023] |

versus

1. The Government of Tamilnadu,
Rep. By its Principal Secretary to Government,
Rural Development & Panchayat Raj Department
Fort St. George,
Chennai 600009.
2. The Director of Rural Development & Panchayat Raj,
Panagal Building,
Saidapet,
Chennai 600015.
3. The District Collector,



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Salem District,
Salem.

4. The Principal Accountant General
(A & E) Tamil Nadu,
No.361, Anna Salai,
Chennai 600018.

...

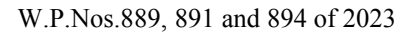
Respondents
[In all Writ Petitions]

PRAYER: Writ Petitions have been filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, or any other order or Direction, directing the Respondents to extend the benefit of orders passed by Division Bench of this Court in W.A.No.431 of 2016 dated 11.04.2016 and W.A.No.2358 of 2021 dated 16.12.2021 by counting 50% services rendered by the Petitioners in the post of part time Panchayat Clerk from 01.11.1979 to 09.02.1995; 09.03.1981 to 09.02.1995 and from 11.08.1981 respectively for the purpose of getting pension along with regular service from 10.02.1995 till 30.04.2016; 10.02.1995 to 30.06.2019 and from 10.02.1995 till 31.01.2019 rendered by the Petitioners respectively.

For Petitioners : Mr. K.S. Viswanathan
[in all W.Ps.] Senior Counsel for
Ms. T. Hemalatha

For Respondents : Mr. V. Jeeva Giridharan
[in all W.Ps.] Additional Government Pleader
[for R1 – R3]

Mr. V. Vijayshankar
[for R4]



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2.(b) The Writ Petitioner in W.P.No.891 of 2023 was initially



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appointed as Part time Panchayat Clerk in Saarvaai Village Panchayat, Thalaivasal Panchayat Union, Salem District, w.e.f. 11.08.1981. Subsequently, the said post was re-designated as Panchayat Assistant w.e.f. 01.01.1991. Thereafter she was appointed as Junior Assistant on 10.02.1995 and retired on 30.06.2019 as Deputy Block Development Officer.

2.(c) The Writ Petitioner in W.P.No.894 of 2023 was also initially appointed as Part time Panchayat Clerk in Ramanaikkan Village Panchayat, Aathur Panchayat Union, Salem District, with effect from 09.03.1981 and subsequently the post of part time panchayat clerk was re-designated as Panchayat Assistant w.e.f. 01.01.1991. Thereafter he was appointed as Junior Assistant on 10.02.1995 and subsequently as Deputy Block Development Officer and retired on 31.01.2019.

3. The petitioners were granted pension without taking into account their part time services. The Government of Tamil Nadu issued G.O.Ms.No.39, Rural Development Department and Panchayat Raj dates 13.06.2011 by giving benefit of 50% of part time Panchayat service.



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However, the said guidelines were modified by G.O.Ms.o.77 Rural Development and Panchayat Raj (PA4).

4. It is the grievance of the Writ Petitioners that their part time services from initial appointment till their appointment of regular post has not been taken into account for pensionary benefit. G.O.M.No.39 Rural Department and Panchayat Raj dated 13.06.2011 passed giving benefit of counting 50% of part time panchayat service. Subsequently G.O.Ms.No.77 dated 12.07.2013 was passed restricting the counting of part time services. However, para 4(b) of the said G.O.Ms.No.77 was set aside by this Court in W.P.No.32579 of 2013 etc., Based on that the Division Bench in W.A.No.259 of 2016 dated 10.03.2016 upheld the order passed by the learned single judge holding that the employees who were absorbed prior to 01.04.2003 are entitled to count 50% of their part time service for pensioner benefit. Hence the present writ petitions are filed.

5. It is the stand of the Respondent that as per G.O.Ms.No.408 Finance and (Pension) Department dated 25.08.2009 half of the service



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rendered by the Government Servants in temporary service viz., Non-Provisionalised Service, consolidated pay, Honorarium and Daily Wages basis on or after 01.01.1961 absorbed in regular service before 01.04.2003, shall be counted for pensionary benefits along with regular service subject to the condition that the service rendered in Non-Provisionalised service, consolidated pay, Honorarium and Daily Wages basis shall be in a job involving in whole employment in Government Department. It is the further contention that the Panchayat Clerks duties and responsibilities are similar in nature. Full time and Panchayat Clerks and part time Panchayat Clerks duties and responsibilities such as convening Panchayat meetings, maintaining of 1 to 31 registers pertaining to the concerned village panchayat are similar in nature. However there is no service Rules to the full time Panchayat Clerk and Part time Panchayat Clerks.

6. Further, it is the contention in the counter that as per the subsequent G.O.Ms.No.77 Rural Development and Panchayat Raj Department dated 12.07.2013 has superseded the G.O.Ms.No.39 Rural Development and Panchayat Department dated 13.06.2011. Further, Rule



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11(4) of the Tamil Nadu Pension Rules clearly shows that the service rendered in all the non-provincialised service, consolidated pay, honorarium or daily wages shall be job involved in whole time employment. Hence it is his contention that since the petitioner is not in a whole time employment, their past service cannot be counted.

7. 4th Respondent has also filed a similar counter. According to them as per G.O.Ms.No.77 has passed, the petitioner is not entitled. Further Rule 11(4) of the Tamil Nadu Pension Rules makes it clear that past service can be counted only in respect of job involving whole time employment.

8. Learned counsel appearing for the Petitioner would submit that though the Petitioners were originally appointed as part time Panchayat Clerks their job is similar to the full time Panchayat Clerk which has been admitted by the 3rd Respondent. Merely because there is no service rules available at the the relevant point of time, it cannot be said that the petitioners are working as part time Panchayat Clerks. In fact they worked as full time Panchayat Clerks.



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9. Be that as it may. G.O.Ms.No.39 Rural Development and Panchayat Raj dated 13.06.2011 has passed in this regard. Whereas Government has granted benefit to the Panchayat Clerks whether they are permanent clerks or part time clerks they are entitled to count service. When their service has been regularised and appointed as Junior Assistants before 01.04.2003, thereafter G.O.Ms.No.77 Rural Development and Panchayat Raj Department dated 12.07.2013 passed wherein Clause 4(b) restricted that such a past service can not be counted in respect of person worked as part time Panchayat Clerk.

10. The Division Bench of this Court in ***W.A.No.431 of 2016 [The Government of Tamil Nadu and other vs. P.V.Velliyangiri and others – Madras High Court dated 11.04.2016]*** has held that G.O.Ms.No.77 would not be applicable those employees who are entitled to the benefit before the issuance of said Government Order.

11. Similarly, ***W.A.No.612 of 2016 [The Government of Tamilnadu***



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and other vs. M. Rajendran – Madras High Court dated 24.06.2016] in

similar issues, the Division Bench of this Court granted such relief to the similarly situated persons.

12. Similarly, in W.P.No.3074 of 2019 by order dated 31.10.2019 this Court is also extended the similar benefit and finally in other Division Bench *W.A.No.2358 of 2021 by order dated 16.12.2021 [The Government of Tamilnadu and others vs. V. Natesan]* granted similar relief.

13. Further it is his contention that in *W.P.No.16771 to 16715 of 2013 batch, by order dated 09.04.2014 [V. Ramar vs. The State of Tamilnadu and others]* this Court has interpreted Rule 11(4) of the Tamilnadu Pension Rules and held that the phrase “job involving whole time employment” cannot be interpreted with a narrow meaning to the effect that such benefit is to be given only to a person appointed as full time employee or on regular employment.

14. In *W.P.(MD) No.256 and 257 of 2015 dated 11.05.2017 [P.*



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Natarajan vs. the State of Tamil Nadu and others] also held that such a benefit extended to the persons who are similarly situated persons.

15. The contention of the Respondent is that the Rule 11(4) of the Tamil Nadu Pension Rules is applicable to the Petitioners cannot be countenanced. The similar objection has been raised in W.A.No.1702/2010 the same has been rejected by order dated 20.09.2010 and ***W.A.No.1111 of 2106 [The Government of Tamil Nadu vs. Tamil nadu Rural Development Officeial's Association – High Madras dated 22.03.2018]*** similar view has been taken and ***W.P.No.10865 of 2016 [A. Khadar vs. The Government of Tamilnadu and others – Madreas High Court dated 15.07.2021]*** has also similar view has been taken. Even in the latest G.O.Ms.No.289 Rural Development and Panchayat Raj (E-4) Department dated 04.11.2022 orders have been implemented. In such a view of the matter, the petitioners are also entitled for similar relief. In support of his contention he relied upon the judgment of the Honourable Supreme Court ***2022 SCC Online SC 1493 [Union of India and others vs. Munshi Ram]***.



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16.(a) Learned Additional Government Pleader appearing for the

Respondents mainly contended that though several orders have been passed by this Court on earlier occasion it is the contention that the Division Bench in *W.A.(MD) No.1629 of 2018 and batch [the State of Tamil Nadu and others vs.E. Balachandran]* by order dated 26.02.2021 has held that the issue is not considered consciously leading to a decision may not be a binding precedent. Thus, illegality cannot be allowed to perpetuate. Hence his contention is that Rule 11(4) of Tamil Nadu Pension rules makes it very clear that only the full time Panchayat Clerks are entitled count their past services, the same cannot be applied to others.

16.(b) The learned Additional Government Pleader also relied upon the judgment in W.P.No.1654 of 2021 dated 5.4.2022 wherein this Court rejected the contention. Hence, it is his contention that once the rule is very clear the same has to be given in effect. The Peritioners are not entitled to count their past service as part time workers.

17. I have perused the entire materials. It is not in dispute that the



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Petitioners were originally appointed as a part time Panchayat Clerks before their appointment of Junior Assistants. They have been appointed as Junior Assistants before 01.04.2023. These facts are not disputed. Rule 11(4) of the Tamil Nadu Pension Rules is as follows:

“11(4) Half of the service rendered under the State Government in non-provincialised service, consolidated pay, honorarium or daily wages basis on or after 1st January 1961 in respect of Government employees absorbed in regular service before 1st April 2003 shall be counted for retirement benefits along with regular service, subject to the following conditions, namely:-

(i) Service rendered in non-provincialised service, consolidated pay, honorarium or daily wages basis shall be in a job involving whole time employment;

(ii) Service rendered shall be on consolidated pay, honorarium or daily wages basis paid on monthly basis and subsequently absorbed in regular service under the State Government;



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(iii) *Service rendered in non-provincialised service, consolidated pay, honorarium or daily wages basis shall be followed by absorption in regular service before 1st April 2003 without a break.*

Provided that this sub-rule is applicable to all employees who rendered service under the State Government in non-provincialised service, consolidated pay, honorarium or daily wages basis on or after 1st January 1961 and absorbed in regular service before 1st April 2003.

Provided further that wherever there was break in service before their absorption in regular service before 1st April 2003, the same shall be specifically condoned by the orders of the Head of Departments, in which the employees were regularly absorbed and such period of break, shall not count for the purpose of pensionary benefits.”

18. Though the above Rule makes it clear that a person entitled to claim half of the service for pensionary benefit should have worked in full time employment. It is relevant to note that this Rule 11(4) was a subject matter of issue in W.P.No.16771 to 16775 batches, by order dated 09.04.2014 this court has interpreted the same as follows:



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“26. The phrase "job involving whole time employment" cannot be interpreted with a narrow meaning to the effect that such benefit is to be given only to a person appointed as full time employee or on regular employment. The word "involving" which finds a place in the above phrase makes one to understand the intention of the legislation. A job may be whole time or part time, but if nature of such job involves whole time employment, or if the nature of such job requires whole time employment, then such job has to be considered as a job involving whole time employment, even if it was rendered on part time basis. For instance, the post of pump operator, sometime, is called as a part time appointment. Considering the nature of the job involved to the said post, there cannot be any doubt to the fact that such job requires only a part time service and not for the whole day. Therefore, such post is filled up as a part time appointment as it involves part time service only. On the other hand, the post of a teacher, though termed as a part time, in effect, cannot be construed as involving a part time service not requiring the full time service for the whole day. Going by the facts and circumstances with which such part time teachers were



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appointed, it could be seen that though they were appointed as part time teachers, in effect, they need to be in the work place through out the day by signing the attendance register etc., as like any other regular teachers. They are termed as part time teachers only for the purpose of paying a consolidated salary of meager sum of Rs. 150/- or Rs.300/- as stated supra. In all other aspects, the work was extracted from them like any other regular teachers only.”

19. Considering the above interpretation of this Court the counter of the Respondent No.3 when seen, it is the admitted case that the job of the part time Panchayat Clerks and full time Panchayat Clerks are similar in nature and they have worked continuously. However, there was no service rules framed for the Panchayat Clerks at the relevant point of time. When the nature of the work has not been disputed merely on the basis of the nomenclature showing them as Part Time Panchayat Clerks, it cannot be said that they have not done any work as a regular Panchayat Clerk. It is also relevant to note that G.O.Ms.No.39 Rural Development and Panchayat Raj Department dated 13.06.2011 passed by the Government, has extended the benefit to the person, whether full time or part time Panchayat Clerks



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who have been appointed as Junior Assistant prior to 01.04.2003, they are entitled to 50% of their past service for pensionary benefit. In this case it is not disputed that the Petitioners were appointed as Junior Assistants before 01.04.2003. Therefore, on the date of the Government Order, the petitioners are entitled to count their past services even assuming that they have worked as part time Panchayat Clerks. Thereafter, G.O.Ms.No.77 Rural Development and Panchayat Raj Department dated 12.07.2013 passed wherein clause 4(b) put a restriction that the Part Time Panchayat Clerks are not entitled to claim past services. Similar contention has been raised in W.A.No.1704 of 2010 wherein the Division Bench rejected the above said contention and extended benefit by Order dated 29.09.2010.

20. This Court in W.P.(MD)No.16771 to 16775/2013 dated 09.04.2014 has held that Rule 11(4) of the Tamil Nadu Pension Rules is impliedly overruled by the decision of the Division Bench judgment in W.A.No.1702 of 2010 dated 20.09.2010. In W.A.No.431 of 2010 by order dated 11.4.2016 the Division Bench considered the G.O.Ms.No.39 Rural Development and Panchayat (E5) Department dated 13.06.2011 and ordered



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to count the past service and held that G.O.Ms.No.77 would not be applicable to those employees, who were entitled to the benefit before issuance of said Government Order.

21. Similarly, in W.A.612 of 2016 by order dated 24.06.2016 the Division Bench of this Court has also passed the similar order. A single Judge of this Court in W.P.No.256 and 257 of 2015 dated 11.05.2017 also granted similar order. In W.A.No.1111 of 2016 dated 22.03.2018 a Division Bench of this Court has also passed a similar order. Similarly in W.P.No.10865 of 2009 by order dated 15.07.2021 this Court has passed order directing the Respondent to count past service of the similarly situated persons. In W.A.No.2358 of 2021 the Division Bench by order dated 16.12.2021 has also directed counting of the past service. It is also brought to the notice that even recently in G.O.Ms.No.99 Rural Development and Panchayat Raj (E5) Department dated 27.08.2022 the Government has extended the benefit of similarly placed persons by counting the past service.



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22. Much emphasis has been placed on the judgment of the Division Bench of this Court in ***W.A.(MD) No.1629 of 2018 and batch [the State of Tamil Nadu and others vs. E. Balachandran]*** by order dated 26.02.2021 wherein the Division Bench interpreting Rule 11(4) held that the decision is not considered consciously leading to a decision that may not be a binding precedent. In the above case the rules relating to the Tamil Nadu Village Servants Conduct Rules 1983 and the service of some of the petitioners regularised in the cadre post after 1.4.2003 as and when permanent vacancies arose which have been notified. Only in that context when the rule is specific and the cut off date is also issued as 01.04.2003, the above Division Bench order came into effect. Wherein these cases the petitioners were appointed before 01.04.2003. This aspect is not disputed and when the G.O.Ms.No.39 is also extended the Petitioners are certainly entitled to such benefit and various Division Benches have also upheld the G.O.Ms.No.39 and in fact subsequent G.O.Ms.No.77 clause 4(b) is also not given effect. In such a view of the matter the Petitioners are certainly entitled to the same relief as that of similarly situated persons based on G.O.Ms.39. Now, the State cannot take the stand which has already been



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negated by the Division Benches, mainly on the ground of huge financial burden on the State. In this regard the Honourable Apex Court in ***Union of India and others vs. Munshi Ram case (supra)*** it is held as follows:

“58. Now so far as the submission on behalf of the appellants - UOI/Railways that there shall be huge financial burden on the Railways is concerned, it is required to be noted that the issue is with respect to pensionary benefits. Once it is found that the respondents – Commission Vendors/bearers working in the Northern Railway are also entitled to similar benefits which are given to the similarly situated Commission Vendors/bearers working in different zones/divisions and since they are already being paid the pensionary benefits by counting the benefit of 50% of their services rendered prior to their regularization, there is no reason to deny the similar benefits to the respondents – Commission Vendors/bearers working in the Northern Railway being similarly situated.”

In such a view of the matter this Court is of the view that the Petitioners are certainly entitled for the benefit to count their past service.

23. The Full Bench of this Court in ***Government of Tamil Nadu vs.***



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R.Kaliamoorthy [2019 (6) CTC 705] batch of cases, the Full Bench has answered 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 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



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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."

24. Though the nomenclature of the post is shown as "Part Time Panchayat Clerk" in fact the Respondent No.3 has admitted that the nature of the work is similar to the full time Panchayat Clerk. As there is no service rules at the relevant point of time, the Writ Petitioners are certainly entitled to the benefit.

25. In such a view of the matter all the Writ Petitions are allowed. No costs. The Respondents are directed to count half of past service of the



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writ petitioners for the purpose of pensionary benefits. Such exercise shall be made within a period of two months from the date of receipt of copy of this Order.

31.07.2023

Index : yes
Internet : yes
Neutral Citation: Yes/No
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copy to:

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Rep. By its Principal Secretary to Government,
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N.SATHISH KUMAR, J.,

ggs

Common Order in:

W.P.Nos.889, 891 and 894 of 2023

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