



WP.No.4033/2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.07.2023

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

WP.No.4033/2016

V.Nagarajan

... Petitioner

Versus

1.The Principal Secretary to Government
Rural Development & Panchayats Department
Fort St George, Chennai 600 009.

2.The Principal Accountant General
[Accounts&Entitlements], Tamil Nadu
Chennai 600 018.

3.The Director of Rural Development & Panchayats
Panagal Buildings, Chennai 600 015.

4.The Collector
Kancheepuram, Kancheepuram District.

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records relating to the impugned order of the 2nd respondent in PO3/10315376/R0315376 dated 26.08.2015 and quash the same and direct the respondents to count the service rendered by the petitioner in the post of



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panchayat Clerk/Panchayat Assistant from 07.01.1983 to 28.12.1990 as qualifying service for pension and revise his pension and other retirement benefits accordingly.

For Petitioner	:	Mr.P.Rajendran
For RR 1, 3 & 4	:	Mr.T.K.Saravanan, GA
For R2	:	Mr.V.Vijay Shankar

ORDER

- (1) The writ petition has been filed in the nature of certiorarified mandamus seeking interference with the order of the 2nd respondent, Principal Accountant General [Accounts and Entitlements], Chennai, dated 26.8.2015 in PO3/1315376/3/R0315376 and to direct the respondents to also take into consideration the services rendered by the petitioner in the post of Part Time Panchayat Assistant between 07.01.1983 and 28.12.1990 as qualifying service for pension and consequently, to revise his pension and other retirement benefits.
- (2) The petitioner who has retired from service on attaining the age of superannuation, had been originally appointed as Part Time Panchayat Clerk on 07.01.1983. His services were then recognised



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and he was appointed as Full Time Panchayat Assistant on 28.12.1990. He was appointed as Junior Assistant on 01.10.1995. He was then promoted as Assistant and Deputy Block Development Officer and retired on attaining the age of superannuation as Deputy Block Development Officer on 30.04.2015.

- (3) The only issue to be examined by this Court is grant of pensionary benefits during his service as Part Time Panchayat Clerk between 07.01.1983 and 28.12.1990. The fact that he had been paid the retirement benefits counting his services commencing from 28.12.1990 is not in dispute and is not an issue before this Court.
- (4) In this connection, learned counsel for the petitioner herein drew the attention of this Court to G.O.Ms.No.99, Rural Development and Panchayat Raj [E5] Department dated 27.08.2022. The 2nd reference in the said Government Order was G.O.Ms.No.77, again issued by the same Department, but dated 12.07.2013 and by that particular Government Order/G.O.Ms.No.77, revised orders relating to pension were passed taking into consideration the services rendered by Part Time Panchayat Assistant Grade-I, Grade-II and Panchayat Clerks. It



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had been stated that the time period of such service as part time, shall not be taken into account for the purposes of pension and it was stated that however, those who had benefited from such consideration by virtue of an earlier Government Order, namely, G.O.Ms.No.39, again of the same Department, but dated 13.6.2011, shall however not be affected. In effect, the purport of the G.O.Ms.No.77 dated 12.07.2013 was to reject the consideration of grant of pension for those who were in services as Part Time Panchayat Assistants and that period of service should not be taken into consideration while calculating the qualifying service or qualifying years for calculation of pension.

- (5) By G.O.Ms.No.99, dated 27.08.2022, this aspect was reconsidered. This reconsideration was consequent to several writ petitions which had been filed before the Principal Bench and before the Madurai Bench and it had been stated in the course of the Government Order that judgments had been passed in favour of the petitioners therein. Writ appeals have been filed by the Government and the writ appeals had also been dismissed. Therefore, the Director of Rural



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Development and Panchayat Raj, had sent a proposal to the Government for considering 50% of service rendered in the post of Part Time Panchayat Clerk along with regular service for calculating the pensionary benefits. One condition was put, namely, that the Part Time Panchayat Clerks should have been absorbed into the Government service prior to 01.04.2003.

(6) This date 01.04.2003 assumes importance since there was consideration of this particular aspect by a Division Bench of this Court and also by a Full Bench of this Court and the Reference therein was with respect to regularisation of service of Part Time Panchayat Clerks or any other posts, either before 01.04.2003 or after 01.04.2003 and the effect of grant or otherwise of pension to such employees.

(7) In G.O.Ms.No.99 dated 27.08.2022, after considering the proposal of the Director of Rural Development and Panchayat Raj, the Government had finally taken a decision to order as follows:-

"4.The Government have examined the proposal of the Director of Rural Development and Panchayat Raj



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based on the various orders of the Hon'ble High Court of Madras and Hon'ble Madurai Bench of Madras High Court and decided to accept it. Accordingly, permission is accorded to count 50% of service rendered in the post of part-time Panchayat Clerk along with regular service for pensionary benefits in respect of 50 litigants whose details are annexed to this Government Order, who were absorbed in Government service as Junior Assistant/Rural Welfare Officer Grade II/Cashier prior to 01.04.2003, as a "Special Case" subject to the condition that the pension enhancement due to counting of 50% service rendered in the post of part-time Panchayat Clerk has to be fixed notionally from the date of retirement of the individuals with monetary benefit from the date of issue of this order."

- (8) It had been however, stated on behalf of respondents 1, 3 and 4 that this particular Government Order namely, G.O.No.99 dated is again the subject matter of challenge but not with respect to consideration of part time service for calculating the pension, but with respect to the last portion namely, notional fixation from the date of retirement of the individual and that monetary benefits shall be issued only from



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the date of the Government Order namely 27.08.2022.

- (9) However, as a concept, recognition of grant of pensionary benefits even for the service rendered as Part Time Panchayat Assistants, had not been questioned before the Court. It is the date of applicability of the order and the date from which the monetary benefit shall start to flow which is now under challenge before the Courts.
- (10) My attention has been drawn by the learned counsel appearing for the 2nd respondent to a Division Bench judgment of the Madurai Bench of this Court in a batch of writ appeals in WA [MD] No.1629/2018 batch – ***State of Tamil Nadu rep.by its Principal Secretary to Government, Revenue Department, Chennai and Others Vs. R.Balachandran.*** The Division Bench was concerned with the issue of entitlement of 50% of service rendered prior to the change of status as full time Government services for Village Headman/Thalaiyari and recruitment made afresh for erstwhile Karnams [Village Officers] appointed on hereditary basis.
- (11) It is the contention of the learned counsel for the 2nd respondent that though the judgment referred to a different category of posts, still the



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Division Bench had examined the issue whether the service rendered prior to the change of status from Part Time to Full Time could be considered towards pensionary benefits and whether 50% of such services could actually be taken into consideration while granting monetary benefits under the Tamil Nadu Pension Rules, 1978.

(12) The Division Bench, had finally, held as follows:-

"25.Insofar as the Village Officers (Karnams) are concerned, the Act itself clearly specifies that they were part-time Village Officers and therefore, they were abolished. That is the reason why a challenge was made before the Courts. Thus, there is no ambiguity with respect to their own status. Secondly, re-employment has been made in favour of few eligible persons after due scrutiny by the Committee. A learned Single Judge (The Hon'ble Mr. Justice V.Ramasubramanian), as he then was, by order dated 09.01.2009, made in W.P.Nos.276 to 280 of 2009 and W.P.Nos.287 to 293 of 2009, in the matter of M.Annai Muthu v. State of Tamil Nadu and others, has clearly captured the history, background and their entitlement. Even for them, a separate Government Order has been passed in G.O.Ms.No.121, Revenue Department, dated



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13.03.2001, giving certain pensionary benefits. In this connection, we would appropriately quote the following paragraphs:-

“17. However, by an order in G.O.Ms.No.121, Revenue, dated 13.3.2001, the Ex. Village Officers who lost their jobs on 14.11.1980 and who got appointed temporarily after 1988 by acquiring the minimum general educational qualification subsequent to the date of abolition, but who retired without completing the qualifying service of 10 years, were granted the benefit of special pension originally ordered to the Ex-Officers who lost their jobs and who never got re-employment. Paragraphs-7 and 8 of the said order read as follows:-

"7. The Government have after careful consideration of the request of the Retired Village Administrative Officers and the recommendation of the Principal Commissioner and Commissioner of Revenue Administration, direct that the pensionary benefits ordered in G.O.(Ms) No.828, Revenue, dated 23.8.1996 and enhanced in G.O.(Ms) No.629, Revenue,



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dated 22.7.1998 be extended to the Ex-Village Officers who lost their jobs on 14.11.1980 and who did not possess minimum general educational qualification at the time of abolition of the posts of Village Officers (i.e.) 14.11.1980, but obtained the educational qualification, subsequent to 20.2.1982 and appointed as Village Administrative Officers under Rule 10(a)(i) basis with reference to G.O.(Ms) No.1287, Revenue, dated 6.7.1988 and retired without completing 10 years of qualifying service.

8.The Government also direct that the said category of Ex-Village Officers are eligible for pension sanctioned in paragraph-3 above, with effect from 5.12.1986, excluding for the period they worked as Village Administrative Officers."

.....

In our considered view, the learned Single Judge, as he then was, has correctly applied the law by taking note of the fact even for the recruitment of part-time re-employment. Therefore, in the process, there were separate sets of Rules dealing with pensionary



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benefits. Now, there is no separate sets of Rules. They can recourse to the regular course of Rule applicable to Government servants under the Tamil Nadu Pension Rules, 1978. Incidentally, this being a reemployment, even otherwise Rule 11(3) would act as an embargo.

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 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."



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(13) It must be kept in mind that the Division Bench was concerned with appointment of Village Officers who are governed by Tamil Nadu Village Servants Services Rules.

(14) It was stated that Rule 11[3] of Tamil Nadu Pension Rules, 1978, would act as an embargo so far as those employees are concerned.

(15) Rule 11[3] of the Tamil Nadu Pension Rules is as follows:-

11. Commencement of qualifying service:-

[1].....

[2].....

[3] *Half of the service rendered by a Government servant under non-pensionable establishment shall be counted for retirement benefits along with regular service under pensionable establishment subject to the following conditions:-*

- i. Service under non-pensionable establishment shall be in a job involving whole time employment.*
- ii. Service under non-pensionable establishment shall be on time scale of pay and*
- iii. Service under non-pensionable establishment shall be continuous and followed by absorption in pensionable establishment without a break.*



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***Provided** that in respect of those who retired prior to the 14th February, 1996, the retirement benefit or revised retirement benefit, as the case may be, admissible to them shall be paid from the 14th February, 1996 and there shall be no claim for arrears in any case, for the period up to the 13th February, 1996.*

- (16) It applied to those who had retired prior to the date of the Government Order which Government Order was G.O.Ms.No.283, Finance [Pension] Department, dated 15.04.1996. In the very same Division Bench judgment, at paragraph No.21, it had been stated by the Division Bench as follows:-

*"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...**".*

- (17) The one paragraph which would be relevant for the discussion in this particular case would be paragraph No.42 of the Full Bench judgment which reads as follows:-



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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."

(18) The question which was referred to the Full Bench was as follows:-

"Whether half of the past service rendered by Government servants whose appointments were regularised after 1.4.2003 can be counted for the purpose of grant of Pension under the provisions of the Tamil Nadu Pension Rules, 1978 in the light of the amendments to the aforesaid rules vide G.O.Ms.No.259, Finance [Pension] Department, dated 06.08.2003 and G.O.Ms.No.41, Finance [Pension]



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Department, dated 08.02.2010."

(19) This had been answered by the Full Bench by stating that 50% service rendered by Government servants whose appointments were regularised after 01.04.2003 are not eligible for that particular service to be counted while granting pension. In the corollary, it would only mean that those who had been regularised before 01.04.2003 should be granted the said benefit. This very judgment, would only come to the assistance of the petitioner herein. The Reference has been 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.



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(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."*

(20) 45[i] of the above very clearly states that those who have been appointed prior to 01.04.2003 whether on temporary or permanent



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basis, will be entitled to get pension as per Tamil Nadu Pension Rules, 1978.

(21) Reference had also been drawn to Rule 11[4] of the Pension Rules.

Rule 11[4] is as follows:-

"11[4] Half of the service rendered under the State Government in non-provincialised service, consolidated pay, honorarium or daily wage basis on or after 1st January 1961 in respect of Government employees absorbed in 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 ;*
- 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.*



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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 1861 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.

- (22) Though the learned counsel for the 2nd respondent stated that [i] above would apply, that may not be applicable since the other two aspects, namely service rendered on consolidated pay, honorarium or daily wages and those who had been subsequently absorbed in service alone would be eligible for absorption in regular service.
- (23) In the instant case, the petitioner had been working as Part Time Panchayat Assistant from 07.01.1983 till 12.12.1990. He was appointed as full time Panchayat Assistant on 12.12.1990. He was



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absorbed in the Government service and promoted as Junior Assistant on 01.10.1995. Since he had been absorbed prior to 01.04.2003, applying the ratio above, he is entitled for pensionary benefits.

- (24) Whether the petitioner is entitled for the monetary benefits and as from the passing of Government Order in G.O.Ms.No.99 or not, is an issue which will have to be examined by the respondents depending on the final outcome of the writ petitions which are now presently pending, questioning the date on which monetary benefit should be applicable. But, as a concept, I hold that the petitioner is entitled for 50% of his service rendered as Part Time Panchayat Assistant to be counted for grant of pension.
- (25) Learned Government Advocate appearing for respondents 1, 3 and 4 stated that a learned Single Judge of this Court has taken a different view from the view taken by the Full Bench. But, as on date, the judgment of the Full Bench holds. Therefore, I hold that the petitioner is entitled to count the service rendered by him in the post of panchayat Clerk/Panchayat Assistant from 07.01.1983 to 28.12.1990 as qualifying service for pension. However, as regards



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calculation of the pension payable to the petitioner, I leave it to the wisdom of the respondents.

(26) The writ petition stands **allowed**. No costs.

10.07.2023

AP

Internet : Yes

To

- 1.The Principal Secretary to Government
Rural Development & Panchayats Department
Fort St George, Chennai 600 009.
- 2.The Principal Accountant General
[Accounts&Entitlements], Tamil Nadu
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C.V.KARTHIKEYAN, J.,

AP

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