



Rev.Aplc(MD)No.125 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:23.02.2023

CORAM:

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HONOURABLE MR.JUSTICE K.K. RAMAKRISHNAN**

**Rev.Aplc(MD)No.125 of 2022
and
C.M.P(MD)No.8000 of 2022
and
CONT.P(MD)No.559 of 2019**

Rev.Aplc(MD)No.125 of 2020

1.The Principal Secretary to Government,
Revenue Department,
Secretariat, Chennai-600 009.

2.The Principal Secretary and
Commissioner of Revenue Administration,
Ezhilagam, Chepauk,
Chennai-600 005.

3.The District Collector,
Madurai District,
Madurai.

:Review Petitioners
/Appellants

.VS.

C.Ayyanan

: Respondent/Respondent

PRAYER: Review Application filed under Order 47 Rule 1 & 2 of
C.P.C., r/w. Section 114 of C.P.C, against the order passed by this Court



Rev.Aplc(MD)No.125 of 2022

in W.A(MD)No.949 of 2018, dated 16.07.2018

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For Petitioners

:Mr.Veera Kathiravan,
Additional Advocate General,
Assisted by, Mr.D.Sasikumar,
Additional Government Pleader

For Respondent

:Mr.S.Visvalingam

Cont.P(MD)No.559 of 2019

C.Ayyanan

:Petitioner/Appellant

.VS.

The Principal Secretary to Government,
Revenue Department,
Secretariat, Chennai-600 009.

: Contemnor/1st Appellant

PRAYER: Contempt Petition filed under Section 11 of Contempt of Courts Act, 1971, to punish the respondent for his wilful and deliberate disobedience to the orders of this Court in W.A(MD)No.949 of 2018 dated 16.07.2018.

For Petitioner

:Mr.S.Visvalingam

For Respondent

:Mr.Veera Kathiravan,
Additional Advocate General,
Assisted by, Mr.D.Sasikumar,
Additional Government Pleader



Rev.Applc(MD)No.125 of 2022

COMMON ORDER

DR G.JAYACHANDRAN, J.
AND
K.K. RAMAKRISHNAN, J.

One Mr.Ayyanan was appointed as Village Thalayari in the proceedings of the Tahsildar, Melur, dated 27.06.1979. Thereafter, few years later, when Tamil Nadu Government considered the representation given by Tamil Nadu Village Assistants Association and Tamil Nadu Government Basic Servant Village Assistants Association to make their posts permanent and the same was considered by a High Level Committee and based on the recommendation of the High Level Committee, the post of Village Assistant, permanently known as Thalayari, was made as full time post with time scale. To that effect G.O.Ms.No.625, Revenue Department, dated 06.07.1995 was issued. Accordingly, Ayyanan was absorbed into the post of Village Thalayari with time scale.

2.The issue before this Court in the review petition is that the said Ayyanan filed a writ petition in W.P(MD)No.14679 of 2017 making request to consider his past services from 1979 to 1995 for the purpose of



Rev.Aplc(MD)No.125 of 2022

calculating his pensionary benefits. Such a request was made by the said Ayyanan, based on the subsequent G.Os passed by Tamil Nadu Government, particularly, G.O.Ms.No.408, dated 25.08.2009, wherein, the past services of non-provincialised, consolidated, Honorarium and Daily Wages employees absorbed in regular service before 01.04.2003, where given the benefit of counting 50% of the past services for pensionary benefits. The said writ petition was allowed by the learned Single Judge, on 16.08.2017. Against which, the State preferred a writ appeal in W.A(MD)No.949 of 2018 and the same was disposed on 16.07.2018 modifying the order of the learned Single Judge and directed the Government to count 50% of the service rendered by the petitioner in the post of Thalayari from 27.06.1979 till 01.06.1995 to be taken into account for pensionary benefits.

3.This order is now sought to be reviewed in Rev.Apl.(MD) No. 125 of 2022. The State is forced to file this review petition for the reason that the consistent view taken by the Court regarding the counting of 50% of the past services came to be revisited by the Full Bench of this Court in the case of **GOVERNMENT OF TAMIL NADU-VS-R.KALIYAMOORTHY**, reported in **2019(6) CTC 705**, a batch of writ



Rev.Applc(MD)No.125 of 2022

appeals, which was disposed of on 03.12.2019, wherein, the Full Bench has cleared the position that when a person is entitled for counting the past services after the cut-off date ie., on 01.04.2003 for pensionary benefits. In paragraph Nos.40 to 42, the Full Bench has illustrated that such 50% of the past services by him, it should be taken into consideration for pensionary benefits. Till then, the Hon'ble Supreme Court has followed the dictum laid down in Velumayil's case and the same been revisited by the Division Bench as stated above. Thereafter, when a similar batch of cases in connection with Thalayari came for consideration, the Division Bench of this Court vide judgment, dated 26.02.2021, after considering all the previous judgments of this Court, had successfully put the facts of the case and settled the legal position in the following terms:

“A perusal of the Tamil Nadu Village Servants Conduct Rules, 1983, clearly states the status and position of Writ Petitioners. Certainly, they come under the definition 'Village Assistants'. However, Rule 3, which facilitate a Village Servant to take job of part-time work or occupation, makes it abundantly clear that he is only a part-time Government Servant. Similarly, Rule 14 of Tamil Nadu Village Servants Service Rules, 1980, which gives a succour to a part-time Government servant, as that of the



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Rev.Applc(MD)No.125 of 2022

respondents, gives a specific compensation. A conjoint reading of the aforesaid Rules would show that a Village Servant/Assistant was having a part- time service alone.

19.Now, let us go into the subsequent Government Orders passed, followed by Rules viz., Tamil Nadu Village Assistants Pension Rules, 1995. We have already discussed the Government Order, which came into existence only at the instance of the respondents Village Assistants, who were working in such capacity as part timers. For the first time, under the said Government Order, a regular time scale of pay came into existence. This is a very important point to be noted with respect to the status of the respondents as part-time Talayaris and they have been brought into regular Government Service. Therefore, regular time scale of pay was fixed with effect from 01.06.1995. The subsequent Rules have been framed to take care of their interest. We may note that Rule 2 to reiterate the aforesaid position, which does not create any doubt in our mind. Under Rule 7, the eligibility of a Village Assistant would arise only when a Village Assistant renders qualifying service. Similarly, under Rule 4(a), the length of service for calculation of pension and gratuity, temporary, officiating and permanent (full-time) service alone should be reckoned as qualifying service. Now, this Rule has been given a go-bye. Resultantly, what the respondents (Talayaris) seek is a relief contrary to their regularisation order, by which, they were brought under the



Rev.Applc(MD)No.125 of 2022

regular time scale of pay with effect from 01.06.1995 and the Rules framed thereafter. Therefore, they cannot approbate and reprobate and it is only on their request, part-time service was converted into full-time service prospectively, creating the status of regular post with regular time scale of pay.”

4.This order came to be challenged before the Hon'ble Supreme Court and the Hon'ble Supreme Court has confirmed the order of the Division Bench. So, this has prompted the State now to file a review petition on the ground that the petitioner Ayyanan was initially appointed permanently the post of Thalayari only as a part time employee. He does not fall under the category of person eligible to count 50% of the past service. Such a benefit is only for a full time employee.

5.Relying upon the concluding paragraph of the judgment of the earlier Division Bench, dated 26.02.2021, the learned Additional Advocate General, submitted that the issue has been given a quietus by clarifying the position after considering the earlier judgments as well as the G.O passed by the Government and the object of passing G.O.Ms.No. 625, dated 06.07.1995 and would rely upon Paragraph No.21 of the



judgment, wherein the relevant portion of the Full Bench judgment is extracted to better off the conclusion that Thalayari, who served as a part time before being brought under regular time scale, cannot have the benefit of counting their 50% of the past service. For better appreciation, paragraph No.21 of the Full Bench judgment is extracted below:

*“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 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. 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 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 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 date of 01.04.2003.

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 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.

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.

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 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



Rev.Applc(MD)No.125 of 2022

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.”

6.In the mean while, the petitioner Ayyanan has filed a Contempt Petition in Cont.P(MD)No.559 of 2019 for not complying the order passed by the Division Bench in W.A(MD)No.949 of 2018. The said contempt petition is also taken up along with the review application.

7.The learned counsel appearing for Ayyanan would submit that the contention of the learned Additional Advocate General that the said Ayyanan was appointed for part time job as Thalayari on 27.06.1979 is incorrect and baseless. On reading the appointment order dated 27.06.1979, the learned counsel would submit that the order clearly indicates that he has been permanently appointed in the place of



Rev.Applc(MD)No.125 of 2022

Chinnandi and nowhere in the appointment order, it is indicated that it is a part time job. For the said purpose, the learned counsel also by relying upon the judgment of the Division Bench of this Court rendered in ***THE DISTRICT COLLECTOR-VS-K.RAMAN NAIR***, passed in ***W.A(MD)No.16 of 2009***, wherein, this Court has made an observation that the question whether the nature of appointment is part time with Honorarium or temporary in scale of pay not only depends upon the Rule and Guidelines, but also depends upon the letter of appointment issued in favour of the employee concerned. Citing these observations of the Division Bench, the learned counsel for Ayyanan would submit that when the appointment order, dated 27.06.1979, is silent about the character of the appointment whether full time or part time, it is to be presumed that it is a full time job.

8.This Court is unable to countenance the said submission for simple reason that the appointment order, dated 27.06.1979 does not even speak about the wage or pay for the Village Thalayari. It is a proceedings wherein one Chinnandi incidentally happened to be the father of the Ayyanan, was removed from the post of Village Thalayari and for the said post, notice has been affixed in the Village inviting



Rev.Applc(MD)No.125 of 2022

application and, four persons have applied, out of which, Melur Tahsildar has found Ayyanan fit to be appointed permanently as Village Thalayari.

This order also indicates that Ayyanan was already serving temporarily as Thalayari in that village. Except this information, there is no other particulars in the appointment order, but there is no evidence to infer that the appointment is full time appointment for the particular wage or pay, whereas, the Division Bench of this Court, after considering G.O.Ms.No. 625, dated 06.07.1995, has categorically held that till 1995, the Village Thalayari was only serving as a part time employee and they were making request to bring them under the regular time scale of pay and as a full time employee since 1980 and that has been considered by the High Level Committee and based on the recommendation, part time Village Thalayari were absorbed as a full time Government Servant with pay scale of 600-10-650 and the said G.O has come into effect after 01.06.1995.

9.The petitioner Ayyanan, pursuant to the order of this Court and the G.O., has been paid pension taking into service from 01.06.1995. His past service has not been taken into account, because, it is a non-provincialised service and part time. Therefore, neither G.O.Ms.No.625



Rev.Applc(MD)No.125 of 2022

dated 06.07.1995 nor G.O.Ms.No.408 dated 25.08.2009, is helpful to the case of Ayyannan. Therefore, this Court clarifies, in the application, that the order of the learned Single Judge in W.P(MD)No.14679 of 2017 directing to consider the past services of Ayyannan in entirety and the subsequent judgment of the Division Bench in W.A(MD)No.949 of 2018 to consider the 50% of the past services of Ayyannan, prior to 01.06.1995 is set aside, in the light of the Full Bench judgment rendered by this Court subsequently in Kaliyamoorthy's case(cited supra), dated 03.12.2019 and further clarified by the Division Bench in a batch of writ appeals in W.A(MD)Nos.1629 of 2018 etc of batch, dated 26.02.2021.

10.Accordingly, this Review Petition is allowed and the Contempt Petition is closed. No costs. Consequently, connected miscellaneous petition is closed.

[G.J.,J.] [K.K.R.K.,J.]
23.02.2023

NCC:Yes/No
Index:Yes/No
Internet:Yes/No
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Rev.Applc(MD)No.125 of 2022

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K.K. RAMAKRISHNAN, J.**

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ORDER MADE IN

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