



W.A.(MD) Nos.1631, 1632 and 1642 to 1656 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 30.11.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

WA(MD) Nos.1631, 1632 and 1642 to 1656 of 2021
and
C.M.P(MD)Nos.7077, 7082 & 7083, 7132, 7134 & 7135, 7136 & 7139,
7140 & 7141,
7144, 7145 & 7146, 7147 & 7148, 7149 & 7150, 7151 & 7152, 7153 &
7154, 7155 & 7157, 7158 & 7159,
7160 & 7161, 7162 & 7163 and 7164 & 7165 of 2021

1.The Principal Secretary to Government,
Revenue Department,
Secretariat, Chennai – 9.

2.The Commissioner of Revenue Administration,
Ezhilagam,
Chepauk, Chennai – 5.

3.The District Collector,
Sivagangai District.

... Appellants/Respondents 1 to 3
in all the Writ Appeals

Vs.

M.Krishnan

... 1st Respondent/Writ Petitioner
in WA(MD) No.1631 of 2021

K.R.Anguchamy

... 1st Respondent/Writ Petitioner
in WA(MD) No.1632 of 2021



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N.Krishnan

... 1st Respondent/Writ Petitioner
in WA(MD) No.1642 of 2021

A.Alagu

... 1st Respondent/Writ Petitioner
in WA(MD) No.1643 of 2021

M.Arumugam

... 1st Respondent/Writ Petitioner
in WA(MD) No.1644 of 2021

M.Shanmugam

... 1st Respondent/Writ Petitioner
in WA(MD) No.1645 of 2021

P.Rajangam

... 1st Respondent/Writ Petitioner
in WA(MD) No.1646 of 2021

T.Malaichamy

... 1st Respondent/Writ Petitioner
in WA(MD) No.1647 of 2021

G.Durairaju

... 1st Respondent/Writ Petitioner
in WA(MD) No.1648 of 2021

M.Narayanan

... 1st Respondent/Writ Petitioner
in WA(MD) No.1649 of 2021

S.Krishnan

... 1st Respondent/Writ Petitioner
in WA(MD) No.1650 of 2021

M.Mayalagu

... 1st Respondent/Writ Petitioner
in WA(MD) No.1651 of 2021

M.Muthuramalingam

... 1st Respondent/Writ Petitioner
in WA(MD) No.1652 of 2021

M.Anguchamy

... 1st Respondent/Writ Petitioner
in WA(MD) No.1653 of 2021

K.Manivasagam

... 1st Respondent/Writ Petitioner
in WA(MD) No.1654 of 2021



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M.Peter

... 1st Respondent/Writ Petitioner
in WA(MD) No.1655 of 2021

S.Antonyamy

... 1st Respondent/Writ Petitioner
in WA(MD) No.1656 of 2021

The Accountant General (A&E),
Chennai.

... 2nd Respondent/4th Respondent
in all the Writ Appeals

Writ Appeal filed under Clause 15 of Letters Patent to set aside the
order, dated 10.02.2020 in W.P. (MD) Nos.24084, 24901, 23208 to
23219, 23531 and 23532 of 2018 respectively.

For Appellants in all the
Writ Appeals

: Mr.Veera Kathiravan,
Additional Advocate General,
Assisted by Mr.S.Shanmugavel,
Additional Government Pleader

For Respondents

:Mr.S.Visvalingam for R1 in
W.A.(MD) Nos.1631, 1632,
1646, 1648, 1649, 1651, 1654,
1655 and 1656 of 2021

No appearance for R1 in W.A.
(MD) Nos.1642 to 1645, 1647,
1650, 1652, 1653, of 2021

Mr.P.Gunasekaran for R2 in all
the Writ Appeals



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J U D G M E N T

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(Judgment of the Court was delivered by **S.M.SUBRAMANIAM, J.**)

These intra-Court Appeals have been instituted challenging the common order dated 10.02.2020, passed in the Writ Proceedings.

2. Since the issue involved in all these Writ Appeals are similar, common order is passed.

3. The respondents have instituted Writ Proceedings, seeking the relief to direct the appellants to count 50% of the services rendered by the respondents in the cadre of “Thalaiyari”.

4. The basis for the claim is under Rule 11(4) of the Tamil Nadu Pension Rules, 1978. Rule 11(2) of the Pension Rules stipulates that half of the service paid from the contingencies shall be allowed to be counted towards qualifying service for pension along with regular service 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.



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(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 authenticated records of service may be available.

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

5. Rule 11 (2) (i) unambiguously denotes that the Service paid from contingencies shall be in a job involving whole time employment and not part time for a portion of the day. Sub Rule 4 (2) to Rule 11 was added by G.O.Ms.No.41, Finance (Pension), dated 09.02.2010. Sub Rule (4) to Rule 11 stipulates that Half of the service rendered under the State



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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 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 paid on monthly basis and subsequent 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;

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 whatever there was break in service before their absorption in regular service before 1st April 2003, the same shall be specially condone by the orders



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of the Head of Department in which the employees were regularly absorbed and such period of break, shall not count for the purpose of pensionary benefits.

6. Rule 11(4)(i) states that Service rendered in non-provincialised service, consolidated pay, honorarium or daily wages basis shall be in a job involving whole time employment. Rule 11 of the Pension Rules as a whole would indicate that the benefit of the counting of half of the services are extended only in respect of the whole time employment and not in respect of part time employment.

7. Rule 11(4) itself is a concession extended and therefore, the said concession is to be extended by scrupulously following the scope of the benefit and any interpretation beyond the scope would defeat the very purpose and object of the Pension Rules. What is not granted under the Rule cannot be extended by way of judicial orders.

8. Question arises, whether the private respondents have served in a whole time employment or part time employment. The said issue is no more *res integra* and completely adjudicated by this Court in the case



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of *State of Tamil Nadu, represented by the Principal Secretary to Government, Revenue Department v. E.Balachandran*, reported in *2021 (3) MLJ 92*, wherein in paragraphs 23 to 25, it is held as follows:

“23.Learned counsel appearing for the respondents/writ petitioners made reliance upon the decision rendered in Writ Appeal (MD) Nos.1254 and 1255 of 2019 dated 19.11.2019 in the matter of the State of Tamil Nadu, rep. by its Secretary, Department of Revenue v. Chinna Karuppaiah. We are afraid that the said decision will not enable the respondents from getting the relief. As aforesaid, the relevant Rules were not brought to the notice of the Court and Rule 16 of the Tamil Nadu Village Servants Service Rules, 1980, speaks about the status of the erstwhile Village Assistants and Village Officers such as Talaiyari and Karnams. Insofar as Talaiyaris are concerned, the part-time posts were sought to be abolished by fixing fixed compensation for the said work done and thereafter, a concession was given by bringing them under regular time scale of pay. The Government Orders concerned, which we discussed, followed by the Rules framed for the aforesaid purpose was not brought to the notice of the Court. We may note at the cost of repetition, but for the Government Order passed on 06.07.1995, the respondents Talaiyaris would have continued to have the status of part-time employees only. Therefore, it is not open to them to consider even from the inception that they were full-time employees, when there was



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no regular full-time scale of pay on a cadre basis.

24.The reliance made on the Tamil Nadu Village Servants Service Rules also is not correct, since it is to be applied prospectively for the new appointments. Therefore, there is no question of deemed permanent status contrary to the Rules and in any case, the respondents cannot approbate and reprobate.

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 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



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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, 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



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sanctioned in paragraph-3 above, with effect from 5.12.1986, excluding for the period they worked as Village Administrative Officers."

18. To summarise, the vexed question of grant of pension for the services rendered by the erstwhile Village Officers has undergone a metamorphosis over the past three decades and step by step the Government have yielded to the demand, categorywise as follows:-

(a) FOR THOSE WHO NEVER GOT RE-EMPLOYED:-

A special pension of Rs.175/- per month later enhanced to Rs.250/- per month with attendant benefits to all those living Ex-Village Officers, who lost their jobs on 14.11.1980 but who never got re-employed was first sanctioned with effect from 5.12.1986. For the families of those who were dead, a special family pension of Rs.100/- per month later enhanced to Rs.150/- per month, was similarly sanctioned.

(b) FOR THOSE WHO GOT RE-EMPLOYED IN 1982:-

For persons who lost their jobs on 14.11.1980 and who were appointed as Village Administrative Officers in the year 1982, by virtue of possessing minimum general educational qualification, but who retired without completing 10 years of service in the new category, their services were directed to be



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counted not from the date of their appointment in 1982 but directed to be counted with effect from 14.11.1980, so that they get 10 years of qualifying service in the new category to get at least minimum pension.

If these persons did not get 10 years of service, even after counting the service from 14.11.1980, then they were directed to be granted the special pension as per G.O.Ms.No.828, Revenue, dated 23.8.1996, with effect from 5.12.1986, but excluding the period of their non-employment.

(c) FOR THOSE WHO GOT RE-EMPLOYED AFTER 1988:-

Persons who lost their jobs on 14.11.1980 and who got appointed temporarily under Rule 10(a)(i) after 1988, by virtue of acquiring minimum general educational qualifications after the date of abolition, the special pension granted to those who were never re-employed, was granted with effect from 5.12.1986, excluding the period of their re-employment on temporary basis.”

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 benefits. Now, there is no separate sets of Rules. They can recourse to the regular course of Rule



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applicable to Government servants under the Tamil Nadu Pension Rules, 1978. Incidentally, this being a re-employment, even otherwise Rule 11(3) would act as an embargo.”

9. The Division Bench Judgment was taken by way of an appeal before the Supreme Court in S.L.P. (Civil) No.15486 of 2021 and the Apex Court in the said batch of appeals confirmed the order of the Division Bench dated 26th February, 2021 by referring para 22 of the Division Bench judgment, which reads as under:-

“22. Therefore, in view of the law laid down as aforesaid, we have no hesitation in holding that the appeals filed by the State are liable to be allowed. There is one more difficulty we may face. This is, with respect to catena of decisions available without taking note of the relevant provisions. Even this issue has been answered by the Full Bench of this Court referred to above, by holding that an issue which is not considered consciously leading to a decision may not be a binding precedent. Thus, illegality cannot be allowed to perpetuate.”

10. In respect of the observations made by the Apex Court in the last paragraph i.e., “In case the regularization in the instant case had



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occurred before 01.04.2003, the petitioner shall be entitled to take appropriate proceedings as are open to them in law.” is inapplicable with the facts of the present case, since the private respondents in the present appeals before us were employed as part time Talaiyaris. The said observation of the Apex Court was dealt with the Plot Watchers in the Forest Department.

11. This aspect has been clarified by the learned counsel appearing on behalf of the Accountant General of Tamil Nadu. Learned Additional Advocate General also would submit that the Review Application filed by the State in Review Application (MD) No.125 of 2022 was allowed by the Division Bench based on the Supreme Court judgment, more specifically, para No.4. The judgment of the Division Bench reported in **2021 (3) MLJ 92** was also considered for the purpose of considering the Review Petition.

12. Therefore, the factual matrix regarding the nature of employment of the private respondents in these Writ Appeals are not in dispute and even as per the Service Rules, they were appointed as Part Time employees and that being the factum, the judgment of the Division



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Bench in the case ***E.Balachandran*** (supra) would squarely apply and thus, these Writ Appeals are to be considered.

13. The learned counsel for the private respondents would submit that the Division Bench of this Court in the case of ***District Collector v. K.Raman Nair dated 16.02.2009***, granted the relief of pension relying on the order of appointment issued to these Thalaiyaris. In the absence of any mention in the appointment order that the employment is part time, the benefit is to be extended. However, the learned Additional Advocate General appearing on behalf of the appellants and the learned Standing Counsel appearing on behalf of the Accountant General of Tamil Nadu, made a submission that this judgment was taken into consideration by the Division Bench in the case of ***E.Balachandran*** (Supra) in paragraph No.22, which we have extracted above.

14. The observation of the Division Bench that, “Even this issue has been answered by the Full Bench of this Court referred to above, (***Government of Tamil Nadu and others v. R.Kaliyamoorthy*** reported in ***2019(6) CTC 705***) by holding that an issue which is not



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considered consciously leading to a decision may not be a binding precedent. Thus, illegality cannot be allowed to perpetuate.” Thus, the said judgment is of no avail to the respondents.

16. In fine, the order passed by the learned Single Judge is running counter to the judicial precedents, including the judgment of the Hon'ble Supreme Court on the same issue. Consequently, the common order dated 10.02.2020 passed in W.P. (MD) Nos.24084, 24901, 23208 to 23219, 23531 and 23532 of 2018 are set aside and the Writ Appeals are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

[S.M.S.J.] & [V.L.N.J.]
30.11.2023

NCC :Yes/No
Index :Yes/No
SJ

To

- 1.The Principal Secretary to Government,
Revenue Department,
Secretariat, Chennai – 9.
- 2.The Commissioner of Revenue Administration,
Ezhilagam,
Chepauk, Chennai – 5.



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