



W.P.(MD).No.17273 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.08.2023

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.17273 of 2023

A.Manivel

... Petitioner

Vs.

1.The Principal Secretary to
Government of Tamil Nadu,
Rural Development & Panchayat Raj Department,
Fort St.George,
Chennai-600 009.

2.The Director of Rural Development
& Panchayat Raj,
Panagal Building,
Chennai-15.

3.The District Collector,
Office of the District Collector,
Dindigul.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records in connection with the impugned order passed by the 3rd respondent vide Na.Ka.No.1920/2021/vuva.3 order dated 02.01.2023 and quash the same and consequently direct the 1st respondent to count the service rendered by the petitioner in the post of part time Panchayat clerks for the purpose of pension



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and other benefits together with all consequential benefits within time stipulated by this Court.

For Petitioner : Mr.A.R.Kannappan

For Respondents : Mr.N.Muthu Vijayan
Special Government Pleader

ORDER

The present writ petition has been filed to call for the records in connection with the impugned order passed by the 3rd respondent vide Na.Ka.No.1920/2021/vuva.3 order dated 02.01.2023 and quash the same and consequently direct the 1st respondent to count the service rendered by the petitioner in the post of part time Panchayat clerks for the purpose of pension and other benefits together with all consequential benefits within time stipulated by this Court.

2. The petitioner joined as a part time Panchayat Clerk on 18.05.1984 at Odanchathiram Panchayat. Thereafter, he was working as part time Panchayat Clert at Idaiyakottai, Valaiyapatti and Puliamarathukottai Panchayat union up to 31.12.1990. In the year 1991, his post was re-designated as Panchayat Assistant and he continued service in the same Panchayat thereafter as



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Panchayat Assistant. On attaining the age of superannuation, he retired from service on 31.07.2013. The 1st respondent vide proceedings in G.O.Ms.No.39 Rural Development and Panchayat Raj Department, dated 13.06.2011 stipulated that the benefit of 50% of the service rendered as part time basis by the Panchayat Clerks to be added with the period of Government service for the purpose of drawing pensioner benefits. The said Government Order was issued with an approval of the finance department. By virtue of the said Government Order, the petitioner is entitled for his service as a part time Panchayat Clerk to be counted for the purpose of payment of pension and other retirement benefits. But the petitioner's service as a part time Panchayat Clerk was not taken into consideration in terms of G.O.Ms.No.39 Rural Development and Panchayat Raj Department, dated 13.06.2011. Hence, the petitioner made a representation, dated 28.12.2022 requesting to pass appropriate orders by taking into consideration the 50% of his service rendered as part time Panchayat Clerk and appropriately calculate his pension benefits and to pay all arrears in pension. However, the impugned proceedings in Na.Ka.No.1920/2021/vuva.3, dated 02.01.2023 came to be passed rejecting the petitioner's claim on the basis of clause 4 (b) of G.O.Ms.No.77 Rural Development and Panchayat Raj



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Department, dated 12.07.2013. Assailing the same, this writ petition came to be filed.

3. According to the learned counsel for the petitioner, the issued involved herein had already attained finality by catina of decisions passed by this Court and hence, pleaded for allowing the writ petition.

4. Per contra, the learned Special Government Pleader has filed a counter and categorically submitted that in terms of clause 4 (b) and (c) of G.O.Ms.No. 77 Rural Development and Panchayat Raj Department, dated 12.07.2013, 50% of the petitioner's services as part time Clerk cannot be included for the purpose of sanction of pension. He further submitted that the Full Bench of this Court was constituted and on reference in W.A.No.158 of 2016 batch by the order of the Hon'ble Full Court, dated 03.12.2019, a clear dictum in Paragraph No.40, a clear explanation has been rendered by this Court and the relevant portion of which is extracted as follows:

40. For example, if a person is appointed prior to 01.04.2003 in a nonprovincialised 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



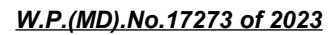
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Subordinate Service Rules before 01.04.2003 and such service is regularised after 01/04/2003, such Government employee is eligible for Government Pension under the Tamil Nadu Pension Rules but at the same time would not be eligible to include half 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.

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 resjudicata 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 followed by the Court at the instance of similarly placed persons.

5. On the basis of the observations made by the Hon'ble Full Bench of this Court in Paragraph Nos.40 and 44, the learned Special Government Pleader pressed for dismissal of the writ petition.



7. The petitioner was appointed to the post of part time Panchayat Clerk on 18.05.1984 and his post was re-designated and he was regularized as Panchayat Assistant with effect from 01.01.1991 in regular time scale of pay. Though the learned Special Government Pleader relied Paragraph Nos.40 & 44 of the order passed by the Hon'ble Full Bench of this Court in W.A.No.158 of 2016 batch, the learned counsel for the petitioner drew my attention to Paragraph No.45 of the said judgment, which is extracted as follows:

45. (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.*

8. It is pertinent to mention here that in case of a Government employee who has rendered service in non-provincialised service and if such services were regularized before 01.04.2003, half of such service rendered shall be



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counted for the purpose of conferment of pensionary benefits. This point squarely covers the case of the petitioner, wherein the petitioner was regularized in the post of Panchayat Assistant as earlier as 01.01.1991 itself and hence, he is entitled to the benefits of G.O.Ms.No.77 Rural Development and Panchayat Raj Department, dated 12.07.2013. This Court in W.A(MD)No.1111 of 2016 in a similar case, has passed favourable orders to the petitioner therein on 22.03.2018. The relevant portion of which is extracted as follows:

“The Government of Tamil Nadu issued an order in G.O.Ms.No.77, Rural Development and Panchayat Raj (PA4) Department, dated 12 July, 2013 giving weightage to 50% of the services rendered in the earlier service for the purpose of fixing pension in accordance with the Government Order in G.O.Ms.No.39, Rural Development and Panchayat Raj (E5) Department, dated 13 June 2011. Paragraph 4(b) of the Government Order in G.O.Ms.No.77 dated 12 July, 2013 excluded the part time service for counting the total service for the pension. The said clause was challenged in W.P.No.19624 of 2014. The learned single Judge allowed the writ petition and quashed the impugned provision, which excludes the part time service from the purview of the Government Order in G.O.Ms.No.77 dated 12 July, 2013.



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6. The Division Bench in **P.V.Velliyangiri**, considered the scope and ambit of the Government Order in G.O.Ms.No.77 dated 12 July, 2013 and the policy decision expressed by the Government in G.O.Ms.No.39 dated 13 June, 2011 and opined that an employee working in a Panchayat as a Full Time Clerk or Part Time Clerk and having been absorbed prior to 01 April, 2003 would be entitled for counting 50% of the earlier service as part time employee under the consolidated pay for the purpose of computation of pensionary benefits. We are in agreement with the views expressed by the Division Bench in its judgment dated 11 April 2016 in W.A.No.431 of 2016. We are informed that, subsequently another Division Bench took the very same view in **Government of Tamil Nadu and others vs. M.Rajendran** and another (judgment dated 24 June 2016 in W.A.No.612 of 2016)

7. There was no appeal preferred by the appellants against the order in W.P.No.19624 of 2014 quashing paragraph 4(b) of G.O.Ms.No.77, Rural Development and Panchayat Raj (PA4) Department, dated 12 July, 2013. It was only the subsequent order following the order in W.P.No.19624 of 2014 which was challenged by the appellants. In any case, the issue is now covered by the decision given by two co-ordinate Benches of this Court. We are, therefore, of the view that there is absolutely no merit in the appeal filed by the appellants. In the upshot, we dismiss the intra court appeal. No costs. Consequently, connected miscellaneous petition is closed.”



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9. In another case in W.P(MD)No.8565 of 2017, dated 24.04.2019, the learned Single Judge of this Court has passed favourable orders in a similar line and the relevant portion of which is extracted hereunder:

*“3.According to the learned counsel appearing for the petitioners, the issue involved herein had already attained finality by order dated 22.03.2018 in the case of **The Government of Tamil Nadu and Others Vs Tamil Nadu Rural Development Official's Association** [WA.No.1111 of 2016] and hence, he prayed for the similar order in this writ petition also.*

4.The relevant portion of the decision cited supra reads as follows:

“4. The respondent filed the writ petition in W.P.No.2697 of 2014 challenging paragraph 4(b) of the Government Order in G.O.Ms.No.77 dated 12 July, 2013. The respondent made a further prayer to count 50% of the services rendered by the members of the association in the post of part time Panchayat Clerk along with the regular service for the purpose of pension in accordance with the Government Order in G.O.Ms.No.39 dated 13 June, 2011. Paragraph 4(b) of G.O.Ms.No.77, dated 12 July, 2013 has already been quashed by a learned single Judge of this Court in a writ petition in W.P.No.19624 of 2014. Therefore, there was no legal requirement on the part of the respondent to challenge the very same clause once again independently. Even then, the learned single Judge considered the background facts including the outcome of the writ petitions filed earlier challenging the very same provision. The learned single Judge quashed



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paragraph 4(b) of the impugned Government Order and directed the appellants to give the benefit of part time service to the members of the respondent association.

5. The very same issue came up for consideration before a Division Bench of this Court in **Government of Tamil Nadu vs. P.V.Velliyangiri** (judgment dated 11 April, 2016 in W.A.No.431 of 2016).

6.The Division Bench in **P.V.Velliyangiri**, considered the scope and ambit of the Government Order in G.O.Ms.No.77 dated 12 July, 2013 and the policy decision expressed by the Government in G.O.Ms.No.39 dated 13 June, 2011 and opined that an employee working in a Panchayat as a Full Time Clerk or Part Time Clerk and having been absorbed prior to 01 April, 2003 would be entitled for counting 50% of the earlier service as part time employee under the consolidated pay for the purpose of computation of pensionary benefits. We are in agreement with the views expressed by the Division Bench in its judgment dated 11 April 2016 in W.A.No.431 of 2016. We are informed that, subsequently another Division Bench took the very same view in *Government of Tamil Nadu and others vs. M.Rajendran and another* (judgment dated 24 June 2016 in W.A.No.612 of 2016).

7. There was no appeal preferred by the appellants against the order in W.P.No.19624 of 2014 quashing paragraph 4(b) of G.O.Ms.No.77, Rural Development and Panchayat Raj (PA4) Department, dated 12 July, 2013. It was only the subsequent order following the order in W.P.No.19624 of 2014 which was challenged by the appellants. In any case, the issue is now covered by the decision given by two co-ordinate Benches of this Court. We are, therefore, of the view that there is absolutely no merit in the appeal filed by the appellants. 8.In the upshot, we dismiss the intra court appeal. No costs. Consequently, connected miscellaneous petition is closed”.



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5. *The learned Special Government Pleader appearing for the respondents has no serious objection.*

6. In view of the submission made on either side, this writ petition is disposed of in line with the decision cited supra.”

10. I am fully in consonance with the decisions discussed supra observing that all those cases squarely covers the case on hand, this Court quashing the impugned order and consequently, direct the 3rd respondent to forward the proposal pertaining to the petitioner to the 2nd respondent, who in turn shall forward the same to the 1st respondent. The 1st respondent shall pass appropriate Government Order in respect of the writ petitioner by refixing his pension and other retirement benefits by counting 50% of the part time service put in by the petitioner. The said exercise shall be completed within a period of six (6) weeks from the date of receipt of a copy of this order.

11. Accordingly, this Writ Petition stands allowed. No costs.

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NCC : Yes / No
Index : Yes / No
Internet : Yes/ No

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L.VICTORIA GOWRI, J.

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