



W.P.(MD)Nos.8372 and 8373 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:16.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)Nos.8372 and 8373 of 2018

N.Samikannu ... Petitioner in W.P(MD)No.8372 of 2018
O.Pachamuthu ... Petitioner in W.P(MD)No.8373 of 2018
Vs.

- 1.The Government of Tamilnadu,
Rep. by its Principal Secretary,
Finance Department,
Fort St. George, Chennai – 600 009.
- 2.The Commissioner,
(Revenue Administration),
Ezhilagam, Chepauk,
Chennai – 600 005.
- 3.The Joint Commissioner,
(Revenue Administration),
Ezhilagam, Chepauk,
Chennai – 600 005.
- 4.The District Collector,
Pudukkottai District,
Pudukkottai.



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5.The Tahsildar,
Ponnamaravathi Taluk,
Pudukkottai District.

... Respondents

Common Prayer:Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the third respondent in Na.Ka.No.Va.Ni 2(2)/13827/2017 dated 09.06.2007 and the order passed by the fourth respondent in Na.Ka.5271/2017/A1, dated 09.10.2017, quash the same and consequently direct the respondents to award pensionary benefit with all attendant monetary benefits to the petitioners for his services as Thalayari (Village Assistant) between 01.07.1969 and 30.06.2001 in the light of the judgment passed by this Court in W.A(MD)No.16 of 2009 and G.O.Ms.No.173, Revenue Department, dated 29.05.2014 and G.O.Ms.No.33, Revenue Department, dated 25.01.2010, within the time frame to be fixed by this Court.

(In both W.Ps)

For Petitioner

For Respondents

: Mr.R.Subrmanian

: Mr.S.P.Maharajan,

Special Government Pleader

COMMON ORDER

Since the issue arises in these writ petitions is one and the same, these writ petitions are disposed of by way of this common order.



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2. These writ petitions have been filed to quash the impugned order passed by the third respondent in Na.Ka.No.Va.Ni 2(2)/13827/2017 dated 09.06.2007 and the order passed by the fourth respondent in Na.Ka.5271/2017/A1, dated 09.10.2017 and consequently, to direct the respondents to award pensionary benefit with all attendant monetary benefits to the petitioners for their services as Thalayari (Village Assistant) between 01.07.1969 and 30.06.2001 in the light of the judgment passed by this Court in W.A(MD)No.16 of 2009 and G.O.Ms.No.173, Revenue Department, dated 29.05.2014 and G.O.Ms.No.33, Revenue Department, dated 25.01.2010, within the time frame to be fixed by this Court.

3. The case of the petitioners is that they joined the services as Thalayari(Village Assistant) on 01.07.1969 in Thirukkalambar Village and Vaarpattu Village respectively. The Government has regularized the services of Thalaiyaris as Village Assistants with effect from 01.06.1995 and the services of the petitioners were regularized from that date. On attaining the age of superannuation, the petitioners retired from service.



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The Government framed Special Pension Rules for Village Assistants namely Tamil Nadu Village Assistants Pension Rules, 1996 and implemented the same vide G.O.(3D) No.9, Revenue (Ser.7(1) Department, dated 28.02.2006. As per Rule 4(a) of the Tamil Nadu Pension Rules, the entire temporary services have to be taken into account as eligible service for pension. But, the Government did not count the petitioners' services prior to regularization for the purpose of awarding pension. The Government issued G.O.Ms.No.173, dated 29.05.2014 implementing the orders passed by this Court in this issue in similar writ petitions, granting pensionary benefits to Thalayaris by counting their entire services. Thereafter, the petitioners sent representation on 24.03.2017 claiming pensionary benefits by counting the earlier service. Since the same was not considered, the petitioners filed W.P(MD)Nos.8465 and 8466 of 2017 wherein this Court vide order dated 28.04.2017, directed the respondents to consider the petitioner's representation dated 24.03.2017. Pursuant to the said order, the third respondent has passed the impugned order, dated 09.06.2017 and the fourth respondent has also passed an order, dated 09.10.2017, rejecting



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the claim of the petitioners. Challenging the same, the petitioners have filed these writ petitions with the aforesaid prayer.

4. The learned counsel appearing for the petitioners, would submit that as per Rule 11(4) of the Tamil Nadu Pension Rules, 1978, the petitioners are entitled to be calculated 50% of earlier temporary services as eligible service for pension. However, the same was not considered in the case of the petitioners and therefore, the impugned orders may be set aside and appropriate direction may be issued to calculate 50% of the earlier service of the petitioners for calculating pension.

5. The learned Special Government Pleader appearing for the respondents, would submit that the issue arises in these writ petitions is no longer res integra. Already a Division Bench of this Court in ***State of Tamil Nadu and another v. E.Balachandran*** reported in **2021 (3) MLJ 92**, in similar circumstances, rejected the request of the petitioners therein and hence, prays for dismissal of these writ petitions.



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6. Heard the learned counsel for the petitioners, the learned Special Government Pleader appearing for the respondents and perused the materials placed before this Court.

7. Admittedly, the petitioners joined the services as Thalayari(Village Assistant) on 01.07.1969. The Government has regularized the services of Thalaiyaris as Village Assistants with effect from 01.06.1995 and the services of the petitioners were regularized from that date. On attaining the age of superannuation, the petitioners retired from service. The grievance of the petitioners is that the Government did not count the petitioners' services prior to regularization for the purpose of awarding pension. Hence, the petitioners filed W.P(MD)Nos.8465 and 8466 of 2017. Pursuant to the order passed by this Court, dated 28.04.2017, the third respondent has passed the impugned order, dated 09.06.2017 and the fourth respondent has also passed an order dated 09.10.2017, rejecting the claim of the petitioners.



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8. As rightly stated by the learned Special Government Pleader, the issue raised in these writ petitions is no longer *res integra*, in view of the decision of the Division Bench of this Court in ***State of Tamil Nadu and another v. E.Balachandran***. Relevant portion of the said decision reads 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.



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

9. Applying the ratio laid down in the decision cited above, these writ petitions cannot be entertained and the same are liable to be dismissed.

10. In the result, these writ petitions are dismissed. No Costs.

16.02.2023

pm

NCC:Yes/No

Index:Yes/No

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M.DHANDAPANI,J.

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