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W.P.Nos.2413 of 2020, etc. batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.2413, 2415 to 2418, 2420, 2424, 2425, 2427, 2428, 2429,
2430, 2432, 2433, 2434, 2436 & 2439 of 2020 and
WMP.Nos.2813 & 2830 of 2020

WP.No.2413 of 2020

S.Ghouse

... Petitioner

Vs.

- 1.The Accountant General(Accounts & Entitlements),
Tamilnadu, 391, Anna Salai, Chennai
- 2.The State of Tamilnadu,
Rep. By its Secretary,
Department of Revenue,
St.George Fort, Chennai
- 3.The District Collector,
Coimbatore District,
Coimbatore
- 4.The Tahsildar,
Pollachi Taluk Office,
Pollachi, Coimbatore District

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a writ of certiorarified mandamus to call for the records pertaining to the proceedings of the first respondent in PENSION 26/4/PT.No.10505/58940 dated 05.11.2019 and quash the same and consequently to direct the respondents to count the half of the service



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rendered as full time Village Assistant / Vettiyan on temporary basis from 24.04.1976 to 01.06.1995 and to pay the pension including the service render the time scale of pay from 01.06.1995 to 28.02.2006.

For Petitioners
in all WP's : Mr.T.S.Mohammed Mohideen

For Respondents
in all WP's

For R1 : Mr.V.Vijayshankar,
Standing Counsel

For R2 to 4 : Mrs.V.Yamuna Devi,
Special Government Pleader

COMMON ORDER

Some of the writ petitions have been filed challenging the order passed by the first respondent dated 05.11.2019 thereby rejected the request made by the petitioners to count their half of service rendered as full time Village Assistant/Vettiyan on temporary basis for the purpose of pension, and the remaining writ petitions have been filed only for direction to the respondents to count half of service rendered by them on temporary basis.

2. The issue in all the writ petitions are one and the same and



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common in nature. Therefore, this Court is inclined to dispose of the writ petitions by common order.

3. The petitioners were appointed as Village Assistant/Vettiyan from the year 1975 on various dates. Thereafter, they were brought under time scale of pay by GO.Ms.No.625 dated 06.07.1995. Though they were retired from service, their service from regular regularisation till their retirement only was calculated for pension purpose. Their earlier service from the date of joining till the regularisation was not calculated for pensionary benefit.

4. The very same issue has been dealt with by this Court in detailed manner in WP.Nos.18734, 18582, 18738 & 18742 of 2020 dated 18.03.2024, wherein it is held as follows:

25. In the case on hand, the petitioners have claimed 100% of past services up to 31.05.1995. Before moving further, the points so far settled without any confusion can be jotted down below:



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(i) The inclusion of qualifying service for pension would arise only if the village assistants were made regular on and from 01.06.1995.

(ii) Half of the services of the Village Assistants with effect from 01.06.1995 can be counted, if such service is followed by a regular VAO / Office Assistant through promotion prior to 01.04.2003, as per Rule 11(4) of the Tamil Nadu Pension Rules 1978.

26. As stated in the beginning of the discussion in view of the W.P.Nos.18734, 18582, 18738, 18742 of 2020 & WP.Nos.11055, 26256, 11512 of 2021 orders issued by the courts full services were allowed to be included and Government has also been issuing various orders for implementing the above order. However, Mr. Haza Nazruddin pointed out by placing reliance on the decision of the Division Bench of the Hon'ble Supreme Court in [Directorate of Film Festivals and others Vs. Gaurav Ashwin Jain and others](#) [reported in (2007) 4 SCC 737] that if in any earlier case any favourable order is given in favour of an individual by taking a view contrary to law, the same can not be taken as a precedent in the subsequent case on the ground of equality. In the said judgement it is held as under:

“22. When a grievance of discrimination is made, the High Court cannot just examine whether someone similarly situated has been granted a relief or benefit and then automatically direct grant of such relief or benefit to the person aggrieved. The High Court has to first examine whether the



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petitioner who has approached the court has established a right, entitling him to the relief sought on the facts and circumstances of the case. In the context of such examination, the fact that some others, who are similarly situated, have been granted relief which the petitioner is seeking, may be of some relevance. But where in law, a writ petitioner has not established a right or is not entitled to relief, the fact that a similarly situated person has been h illegally granted relief, is not a ground to direct similar relief to him. That would be enforcing a negative equality by perpetuation of an illegality which is impermissible in law. The principle has been stated by this Court in Chandigarh Admn. v. Jagjit Singh 10 thus:

"Generally speaking, the mere fact that the respondent Authority has W.P.Nos.18734, 18582, 18738, 18742 of 2020 & WP.Nos.11055, 26256, 11512 of 2021 passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent Authority to repeat the illegality or to pass another unwarranted order. The extraordinary and



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discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent Authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law-indeed, wherever it is possible, the court should direct the appropriate authority to correct such wrong orders in accordance with law-but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent Authority to repeat the illegality, the court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioners' case is similar to the other persons' case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the court and seeking the relief. Is it not more appropriate and convenient to examine the entitlement of the petitioner before the court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which



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other person is not before the case nor is his case. In our considered opinion, such a course-barring exceptional situations- would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ W.P.Nos.18734, 18582, 18738, 18742 of 2020 & WP.Nos.11055, 26256, 11512 of 2021 jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. (emphasis in original)”

27. In fact the same principle has been adopted by the Hon'ble Division Bench in the judgement held in [The State of Tamil Nadu and others Vs. E.Balachandran](#) (cited supra) that granting the relief contrary to the existing pension rules would amount to setting aside two pension Rules without even a challenge. In the concluding part of the above judgement, it is summarised as under:

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, category wise as follows:-

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



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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 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 W.P.Nos.18734, 18582, 18738, 18742 of 2020 & WP.Nos.11055, 26256, 11512 of 2021 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.



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(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 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.

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



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got the benefit of regular employment and permanent posts under the subsequent orders passed, on their request.”

28. The learned counsel for the petitioner submitted that in view of the conflicting decisions they have been given with the following three kind of reliefs or no relief:

1. From the date of joining, entire period of temporary service until 31/05/1995 (pre-regularization period) is rejected for calculating pension. In other words, for the pre-regularized period upto 31/05/1995, NO PENSION is granted as such service is not at all taken into account.

2. Only 50% Pension is granted even for the regularized period from 01/06/1995 till the date of their Promotion as O.A. / V.A.O. In other words, even for the regularized period from 01/06/1995 upto the date of promotion as O.A / V.A.O. only 50% pension is granted.

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3. 100% pension granted from the date of promoting the petitioners as O.A./V.A.O. From the post of Village Assistants.”

29. So far as third type of relief is concerned, there can not be any second opinion, because the relief granted is appropriate and correct in accordance with the rules. The second type of relief also well within the 11(4) Tamil Nadu Pension Rules and hence there can not be of any grievance. By virtue of promotion to the post of Village Administrative Officer or Office Assistant they



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are brought into Tamil Nadu State Service and hence they are governed by general pension rules.

30. Now the grievance can be in respect of the first type of no relief. The reason for complete rejection is by considering the past service as Village Assistant before regularisation in the year 1995 as part time basis. There appears to be a conflict between the two Division Bench judgments [referred above](#) with regard to the acceptance of past services of Village Assistants by considering it as full time.

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31. In a latest judgment of a Full Bench of this Court dated 26.02.2024 made in W.P.No.23823 of 2023 [M.Sivappa Vs. The State of Tamil Nadu and 4 others] had dealt a reference on the issue of retrospective/prospective effect of G.O.Ms.No.74 dated 27.06.2013. Though the above judgment does not deal with anything about services of Village Assistants, the said judgment has made a detailed analysis of how the Government cannot exploit the services of its employees and that too basic level servants, more specifically 86 categories of post in the Tamil Nadu Basic Service. The full bench had concluded and answered that the view that Government is free to appoint persons either in part-time or on a full-time temporary basis to permanent posts and oust them out at its whims and fancies can not be accepted and that such unbridled exercise of indiscretions by the State Government would amount to exploitation.



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32. The post of Village Assistant does not come under the 86 categories of Tamil Nadu basic service. But their post in the village is just basic, as they had been designated as Village Assistants / Thalaiyaris / Village Kavalars. So the principle adopted in M.Sivappa case (cited W.P.Nos.18734, 18582, 18738, 18742 of 2020 & WP.Nos.11055, 26256, 11512 of 2021 supra) for resolving the issue involved in the said case can be considered as a guiding light to solve the continuing conundrum of the nature of the past services of the village assistants. In this regard it is relevant to extract the relevant paragraphs of the Full Bench Judgment as under:

“35. The other judgment, which is cited in the order of reference as one that would support the view that G.O.Ms.No.74 dated 27.06.2013 is retrospective, of the Division Bench in State of Tamil Nadu. by its Secretary, Public Works Department. and another Vs.S.John Charles and others. The Appeal arose out of a judgment of the learned Single Judge of this Court, which had quashed Clause 6 of G.O.Ms.No.74 dated 27.06.2013, which restricts the operation of G.O.Ms.No.22 dated 28.02.2006 only to full time employees. The power of the Government to change its policy was upheld and in the course of the order, the Division Bench has observed that the Government has not taken away the right to regularize the services subsequently provided those persons had completed 10 years of service as on 28.02.2006. The Division Bench described the action of the Government in passing G.O.Ms.No.74 dated 27.06.2013 as an attempt to



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W.P.Nos.18734, 18582, 18738, 18742 of 2020 & WP.Nos.11055, 26256, 11512 of 2021 streamline the scheme relating to regularisation. Even the other judgments of this court, which have been referred to by us earlier, reaffirm the view that parity should be maintained, there should be no exploitation by the Government which is a welfare State and temporary or part-time employment to permanent posts should be stopped.

36. Having considered the entire literature that is available in the form of various pronouncements of this court, as well as the Hon'ble Supreme Court, we find it difficult to accept the judgment of the Division Bench in State of Tamil Nadu. by its Secretary, Public Works Department. and [another vs. S. John Charles and others](#), as one laying down the law to the effect that the Government is free to appoint persons either in part-time or on a full-time temporary basis to permanent posts and oust them out at its whims and fancies and we conclude that such unbridled exercise of indiscretions by the State Government would amount to exploitation.

37. We are of the considered opinion that wherever the posts are permanent in nature and they come within 86 categories of posts which form the W.P.Nos.18734, 18582, 18738, 18742 of 2020 & WP.Nos.11055, 26256, 11512 of 2021 Tamil Nadu Basic Service, temporary or part-time employment should be avoided and those persons, who have been appointed to such posts and who have completed 10 years



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of service as on 28.02.2006 would be entitled to regularisation de hors the nomenclature that is given to the appointment.”

33. So the rationale of the latest Full Bench judgment in the above judgment in my view would override the position taken by the earlier Division Bench for depriving the benefit of including the past services of the village assistant for pensionary benefit.

34. In the background of the above judgment of the full bench and in the absence of any rule in the Village Assistant Pension Rules to include the past service of a village assistant who got regularized on 01.06.1995 and also considering the saving clause present in the said rules the Village Servants Service Rules 1980 that those rules would not adversely affect the persons covered therein, I feel recourse can be had to the general rules of Tamil Nadu Pension Rules, 1978, so far it relates to W.P.Nos.18734, 18582, 18738, 18742 of 2020 & WP.Nos.11055, 26256, 11512 of 2021 the computation of past services for all those village assistants whose services have been regularized as on 01.06.1995 and who continued in the employment as village assistants or promoted as Office Assistants and Village Administrative Officers and retired accordingly.

5. In view of the above, the order impugned cannot be sustained and the same is liable to be quashed. Accordingly, the



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impugned order dated 05.11.2019 is quashed. The respondents are directed to count the half of the service rendered by the petitioners as full time Village Assistant / Vettiyan on temporary basis from the date of their appointment till the date of their regularisation and compute the same as qualifying years of service for the purpose of pensionary benefit and accordingly to pay pension with arrears within a period of twelve weeks from the date of receipt of copy of this order. It is made clear that they are not entitled for any other monetary benefit for those period.

6. With the above direction, all the writ petitions stand allowed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

06.08.2024

Neutral citation: Yes/No
Index: Yes/No
Speaking/Non-speaking order
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To

- 1.The Accountant General(Accounts & Entitlements),
Tamilnadu, 391, Anna Salai, Chennai
- 2.Secretary,
The State of Tamilnadu,
Department of Revenue,
St.George Fort, Chennai
- 3.The District Collector,
Coimbatore District,
Coimbatore
- 4.The Tahsildar,
Pollachi Taluk Office,
Pollachi, Coimbatore District



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G.K.ILANTHIRAIYAN, J.

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