



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.Nos.12033 & 19550 of 2020
and
W.M.P.Nos.13989 & 13990 of 2021

C.Kalavathy

...

Petitioner

[in both W.Ps]

versus

- 1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Revenue and Disaster Management Department,
Secretariat, Chennai - 9.
- 2.The Principal Commissioner and
Commissioner of Revenue Administration,
Ezhilagam, Chepauk,
Chennai - 5.
- 3.The Revenue Divisional officer,
Virudhachalam, Cuddalore District.
- 4.The Tahsildar,
Taluk Office,
Tittagudi, Cuddalore District.
- 5.The Accountant General (A&E),
Teynampet, Chennai - 18. ...Respondents [in both W.Ps]



WEB COPY

PRAYER in W.P.No.12033/2020: Writ Petition filed under Article 226 of the Constitution of India, seeking for a writ of Mandamus, directing the respondents to consider the claims of the petitioner for granting family pension as per the Rule 49 of the Pension Rules and grant family pension based on the basic pay of the deceased husband and grant all consequential benefits including the death benefits with effect from 2001 onwards.

PRAYER in W.P.No.19550/2020: Writ Petition filed under Article 226 of the Constitution of India, seeking for a writ of Certiorarified Mandamus, calling for the records connected in Ref.AI/37/2018, dated 23.04.2018 of the 3rd respondent, and quash the same and direct the respondents to count the petitioner's husband past service from 23.04.1984 to 31.05.1995 along with regular service from 01.06.1995 to 06.08.2001 for the purpose of family pension and grant family pension and pay arrears to the petitioner.

For Petitioner : Mr.A.R.Suresh
[in both W.Ps] for Mr.K.Arumugam

For Respondent Nos.1 to 4 : Mr.R.Kumaravel
[in both W.Ps] Additional Government Pleader
For Respondent No.5 : Mr.V.Vijayshankar
[in both W.Ps]



COMMON ORDER

Since the petitioner in both the Writ Petitions is one and the same, these Writ Petitions were heard together and disposed by this common order.

2.Heard Mr.A.R.Suresh, learned counsel for the petitioner and Mr.R.Kumaravel, learned Additional Government Pleader for the respondents 1 to 4 and Mr.V.Vijayshankar, learned counsel for the 5th respondent and perused the materials available on record.

3.The petitioner is the wife of the deceased Government employee. The petitioner's husband, was initially appointed as Village Assistant on 23.04.1984 on contract basis and his services were regularised by virtue of G.O.(Ms).No.625, Revenue Department, dated 06.07.1995. During the course of employment he died on 06.08.2001.

4.Mr.A.R.Suresh, learned counsel for the petitioner submitted that if the whole of his previous service prior to regularisation is included for calculating the pensionary benefits, he would have been entitled to geta



WEB COPY

total of 17 years of service. He further submitted that as per Rule 11(4) of the Tamil Nadu Pension Rules, 1978, 50% of past service of the petitioner's husband is eligible to be included as qualifying service. In that case, half of the past services between 1984-1995 i.e. 5½ years out of total 11 years can be taken. If the said period is included, he would have got the qualified service of more than 10 years to get pensionary benefits and eventually, the petitioner's is entitled to get family pension.

5.The petitioner who is the wife of the pensioner has filed W.P.No.12033 of 2020 seeking direction against the order passed by the 3rd respondent dated 23.04.2018, rejecting the claim for family pension, and that was the subject matter of the writ petition filed by the very same petitioner in W.P.No.19550 of 2020.

6. Sec. 4(a) of the Tamil Nadu Village Assistant Pension Rules, 1995 prescribes as under:-

"4(a).In computing the length of service for calculation of pension and gratuity, temporary, officiating and permanent



WEB COPY

(full time) service shall be reckoned as qualifying service."

7. The above rule includes the services rendered in temporary, officiating and permanent capacity. However, only full time service rendered by an individual as village assistant alone is included. The nature of services of the Village Assistant should be considered only as '*full time*' service, though the appointment was given as a '*part time*' service. Further, in the order of appointment also, it is not stated that the petitioner is a '*part-time employee*'. Under such situation, the 3rd respondent shall not construe the petitioner as a '*part time employee*' and reject the pensionary benefits.

8. The learned Additional Government Pleader for the respondents 1 to 4 submitted that the petitioner's husband's services can be counted only from the date of regularisation i.e., 01.06.1995. The petitioner's husband is not entitled to have any of his past services to be included in the qualifying services for the sake of pension. Reliance was placed on the learned Division Bench judgment of the Madurai Bench of this Court in



WEB COPY

W.A.[MD]No.867 of 2019, dated 04.01.2024 (*V.Kaliyamoorthy Vs. State of Tamil Nadu and one other*) reported in 2019 (6) CTC 705. The said judgment reiterated what has been already held by an another Division Bench of this Court in its judgment made in W.A.Nos.1629/2018 (MD) and batch, dated 26.02.2021 (*State of Tamil Nadu, Rep. by its Principal Secretary to Government Vs. E.Balachandran*) reported in 2021 SCC Online Mad 982. These judgments speak about those persons who have lost their appointment on 14.11.1980 and who got their re-appointment in the year 1982 or 1988 or those persons who did not get any re-employment at all. But the petitioner's husband Chidambaram has been appointed on 23.04.1984. The appointment order dated 23.04.1984 would also show the same.

9. Mr.A.R.Suresh submitted that it is held in **W.A.Nos.1629/2018 (MD) and batch dated 26.02.2021** (*cited supra*) that the Tamil Nadu Pension Rules, 1978 will not be applicable to the Village Assistants whose services have been regularised with effect from 01.06.1995 and the



WEB COPY

rule applicable to them is the Tamil Nadu Village Assistants Pension Rules, 1995. The relevant paragraphs of the above judgment deals with the impact of government orders issued to regularize after the government considered the representation of the village assistant who were working on a part time basis till then. It also makes a reference about the history, background and entitlement in terms of Village Assistant Pension Rules. It was concluded that the village assistants who got regularized with effect from 01.06.1995 can not claim their past services to be included in terms of sec.11(4) of the Tamil Nadu Pension Rules 1978, as they had held only part time posts. The relevant part of the judgment is extracted as under:

“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



WEB COPY



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 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.



WEB COPY



20. *Much reliance has been made to Rule 11(a) read with Rule 2(o) of the Tamil Nadu Pension Rules, 1978. These Rules are not applicable to the services of Talaiyaris, being in non-pensionable establishment and part-time and that too not in a cadre post. As per Rule 11(4), there must be whole-time employment. Similarly, there shall not be any break, which is in existence. In so far as the other set of employees are concerned, viz., Village Officers (Karnams), we may appropriately quote Rule 16 of the Tamil Nadu Village Servants Service Rules, 1980. Even as per Rule 16 of the said Rules, the post of Talaiyari being-non pensionable, they are not entitled.*

21.....

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*



WEB COPY



be a binding precedent. Thus, illegality cannot be allowed to perpetuate.

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



WEB COPY



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.

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 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



WEB COPY



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 sanctioned in paragraph-3 above, with effect from 5.12.1986, excluding for the period they worked as Village Administrative Officers." 18. To summarise,



WEB COPY



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 REEMPLOYED:- 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



WEB COPY



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 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



WEB COPY



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 reemployment, even otherwise Rule 11(3) would act as an embargo.”

10. The petitioner's husband got his appointment under the Tamil Nadu Village Servants Service Rules, 1980. However, Rule 16 of said Rule would render the post of Village Assistant as non-pensionable. Even though the petitioner's husband's case is not a case falling under re-employment offered to those posts which have been abolished in the year 1980. The fact remains that the petitioner's husband's entitlement for pension would only relate back to his regularisation that was done in the year 1995 by issuance of G.O.Ms.No.625 dated 06.07.1995. The petitioner's husband and similar other persons whose services have been regularised with effect from 01.06.1995 will get the retirement and death benefits and pensionary benefits in accordance with G.O.3(D).No.9 dated



WEB COPY

28.02.2006 which is popularly called as Tamil Nadu Village Assistant Pension Rules, 1995.

11. The petitioner's husband died on 06.08.2001 before attaining superannuation but while he was in service. As per Rule 9(3) of the Tamil Nadu Village Assistant Pension Rules, the family of Village Assistant shall be paid with special family pension of a lump sum of Rs.150/- without DA in the event of the death of the Village Assistant within 10 years of service. Considering the petitioner's husband's death within 10 years of service, the petitioner was given with the family pension of Rs.150/- and that is being challenged.

12. For computation of eligible service, the following has to be taken into account as per Rule 4 of the Village Assistant Pension Rules 1995.

“4(i) In computing the length of service for calculation of pension and gratuity, temporary, officiating and permanent (full time) service shall be reckoned as qualifying service.



WEB COPY



(ii) If there are breaks in service on account of any reason, such breaks shall not have the effect of forfeiting the past service, provided the Village Assistants had been discharged or retired as per rules and orders.

(iii) Leave without pay, suspension allowed to stand as a specific penalty, overstayal of joining time or leave not subsequently regularised and periods of breaks shall not be reckoned as qualifying service.”

13. According to the said Rule, temporary, officiating, permanent (full-time service) shall be reckoned as qualifying service. The petitioner's husband had never been in the part-time or temporary service. He was appointed as a permanent Village Assistant right from his appointment and his services could be counted from the date of his appointment on 23.04.1984 to 06.08.2001. In such case, the petitioner's husband's qualifying services would be 17 years and 4 months. If petitioner's husband's services are counted from the date of regularisation i.e., from 01.06.1995, then he will be having qualifying services of six years till his death. Rule 9 of the Village Assistant Pension Rules which speaks about



WEB COPY

family pension reads as under:

“9(i) Family pension at 30% of Pay last drawn is admissible only in cases of death after 10 years of qualifying service, subject to a minimum of Rs.900/- per month.

(ii) The enhanced family pension i.e. at 50% of last pay drawn shall be allowed upto 7 years from the date of death of a Village Assistant on completion of 10 years of qualifying service from 1-6-95 or for a period upto the date on which the deceased Village Assistant would have attained the age of 65 years whichever is less subject to a minimum of Rs.900/-.

(iii) The family of a Village Assistant shall be paid Special Family Pension of lump sum of Rs.150/- per month without Dearness Allowance in the event of death of Village Assistant within 10 years of service.”

14. Only by placing reliance of these rules, the impugned order has been passed by rejecting the petitioner's claim that she is not entitled to any other pension except the pension allowed under Rule 9(3), which is Rs.150/- per month. It is reasoned out by the respondents that the



WEB COPY

petitioner's husband did not have the qualifying 10 years of service to become eligible for pension. It is obviously because Rule 9(2) contemplates the qualifying service for the family pension to be computed from 01.06.1995 till the date of the death or attaining the age of 65 years, whichever is less. But Rule 9(2) would mandate the computation of qualifying service from 01.06.1995 which is directly in conflict with Rule 4(a). This rule would say that the service for calculation of pension, gratuity, temporary, officiating and permanent shall be reckoned as qualifying service.

15. However, the Rules are silent as to the entitlement of service rendered by the Village Assistant prior to coming into force of these Rules. This may be probably because the services of the village assistant prior to the implementation of the rules are considered as part-time and hence it is not entitled to be included with the regular service for the purpose of pension.

16. But in the case in hand, the appointment order of the



WEB COPY

petitioner's husband does not state that he has been appointed on a part-time basis. Neither the petitioner was a hereditary thalaiyari. A vacancy in the post of village kavalan has been filled up by calling for application and among the applicants the petitioner was found to be fit and was appointed. From the impugned orders of the third respondent, which has dealt the representation of the petitioner under the Village Assistant Pension Rules it is understood that the post of village Kavalan is equivalent to 'Village Assistant'. Of course, his appointment came into effect prior to 01.06.1995. When the appointment order does not state that it is on part-time basis, it is difficult to presume that it is a part time one. Normally, when appointment orders are issued, it implies that it is a full time job even if there is no specific mention in the order that it is a full time job. But in case of a part-time job, there will be a specific mention that it is a part-time job. In the absence of any specific mention that there is a part – time job, the natural implication would be it is a full time job.

17. There can be another argument that the job of a village assistant



WEB COPY

as it is traced from its history, is a part-time job. But even in that case, there is time segment in a day prescribed to have it as a part-time job, except the fact that unlike the government servants the village assistants were given the liberty to undertake any other job of their option. But the struggle to get the job of village assistant as regular one and get it achieved in the year 1995 would only show that the village assistants did not settle with any other job, but they depended upon their job of village assistant. And the policy of the government to make it a regular one would also justify the scope and demand to have that as a full time regular work. In this regard it is also worthwhile to refer the judgment of this Court held in ***W.P.No.27577 of 2008 dated 09.11.2009***. In the said case, it is held as under in paragraph No.4:

*“4. A perusal of the **Tamil Nadu Village Servants Services Rules, 1980** would go to show that the appointing authority namely the Tahsildar shall make appointment of the Village Assistant by following the procedure enshrined there under. Under Rule 6, the Tahsildar is empowered to make either permanent appointment or temporary appointment and not a part*



WEB COPY



time appointment. The order of appointment issued in favour of the petitioner by the Tahsildar by his proceedings in Na.ka.A1/1154/81 dated 23.12.1981 would go to show that the petitioner was appointed on permanent basis (Nirandara Kavalan). Therefore, the argument of the learned Additional Government Pleader that the petitioner was working as a part time Village Assistant cannot be accepted. As I have already stated, under Rule 8 of the Special Rules for the Tamil Nadu Servants Service Rules, the petitioner is deemed to have been appointed under the said Rules, with effect from 01.06.1995. The said Rule further provides as follows:

“nothing contained in this Rules so adversely effect any such person.”

18. So the object of the above reservation clause is that the rules shall not subject any person covered under those rules to any adversity. But for the reasons unknown, there is nothing stated about past service of the Village Assistants even though some of the appointments state about *Niranthara grama Kavalan, meaning permanent village savior.*



WEB COPY

19. In a Division Bench judgment dated 22.10.2019 of the Madurai Bench of this Court in W.A.(MD).No.370 of 2019, ***(K.Velamayil Vs. The Secretary to Government, Revenue Department and 2 others)*** reported in ***2019 SCC OnLine Mad 24862*** the nature of the employment of a Village Assistant and the nature of their service as full-time or part-time was a moot point. In the said judgment delivered on 22.10.2019, it is held that the services of Village Assistants cannot be considered as part-time or temporary service. The learned Division Bench had made a detailed discussion about the nature of the work carried out by a Thalaiyari and concluded that it cannot be considered as a part-time service. The relevant part of the judgment is extracted hereunder:

“17. From the above Government Order, it is evident that the Government wants to contend before this Court and in every forum that the Village Assistants before 01.06.1995 were in part time service cannot be and that therefore, their services upto 01.06.1995 into account for qualifying service under the pension Rules applicable to them, namely, the



WEB COPY



Village Assistants Pension Rules 1995. In para 7, the Government accepted the position that for computing length of service for retirement benefits, the service rendered by a person from the date of original appointment either temporary, officiating should be taken. However, para 8 is self-contradictory inasmuch as it suggests that all Village Assistants were engaged on part time basis. The service of Village Assistant is permanently required and it was always a full time job as held in several judgments. Despite the word taken by the Government the government stand has implemented the order of this Court granting relief to several persons. It has been repeatedly held by this Court in number of judgments without any controversy that the services rendered by Thalayaris till their service was regularised with effect from 01.06.1995 were on permanent basis. This Court has already considered the nature of job and the work rendered by Thalayaris. It is to be noted that after the service of Thalayaris was regularised as Village Assistants with effect from 01.06.1995, the nature of duties were defined. However, the Thalayaris who were appointed earlier on consolidated pay were also doing/full time



WEB COPY



job which can never be treated as temporary or part time. Since Thalayari in those days was a key man rendering valid assistance to revenue department. And officials of Revenue Department, he could never be dispensed with. When the respondents themselves have admitted Rule 4(a) of Tamil Nadu Village Assistants Pension Rules, 1995, there is no scope for confusion except the issue whether the appellant is entitled to count half of the services put in by him in the cadre of Thalayari for the period upto 31.05.1995 or the entire period of service. In such circumstances, the judgment of Hon'ble WFB COPY of Mr. Justice S. Vaidyanathan in M.Vellaian v. Secretary to Government, Department of Revenue and others may not hold good having regard to the specific provisions of Tamil Nadu Village Assistants Pension Rules, 1995. Leave alone the provisions of the Rules which have been given effect to or interpreted in several precedents including the two judgment relied upon by the learned Single Judge in this case in several judgments of Division Bench, this Court has taken a consistent view that the petitioners are entitled to count 50% of their past as Thalayaris upto 31.05.1995 along with the service they



WEB COPY



have have rendered with the regular service for the purpose of pension. Admitted that the decisions of this Court by the Division Bench have been confirmed by the Hon'ble Supreme Court in several cases. It is also admitted that the Government has implemented the consistent view expressed by this Court in several individual cases. It was on account of the fact that some of the precedents and the applicable rules have not been brought forth by the Government Pleaders properly before some of the learned Judges of this Court, the issue which has been raised by the Government has been answered against the Government in several precedents and the ratio settled by this Court has been followed and implemented in several individual cases by the Government. In such circumstances, this Court is of the view that there is no scope for reference to a larger Bench and that the order impugned in WP. (MD)No.70 of 2019 is set aside. The Writ Petition in W.P.(MD)No.70 of 2019 stands allowed in tune with the earlier precedents of this Court. The first respondent is directed to pass orders counting 50% of the services of the appellant put in by him as Thalayari for the period from



WEB COPY



07.01.1983 to 31.05.1995 for the purpose of calculation of pension along with regular services put in by him as Village Assistant and Village Administrative Officer and to send revised pension proposals within a period of six weeks from the date of receipt of a copy of this order.”

20. However in a subsequent judgment held by another Division Bench in W.A.Nos.1629/2018 (MD) and batch (*cited supra*) on a rules based appreciation with reference to the background, history and the scope of the order regularizing the village assistants, it has been held that by virtue of regularisation and creation of permanent posts, the Village Assistants can not claim full-time status to their past services before regularization. It appears to be a conflict between the two Division Bench judgments with regard to the acceptance of past services of Village Assistants as part-time or full-time.

21. In a latest judgment of the Full Bench of this Court dated made in W.P.No.23823 of 2023 had dealt a reference on the issue of



WEB COPY

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 including 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 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 can not be accepted and that such unbridled exercise of indiscretions by the State Government would amount to exploitation.

22.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 Kavalar. So the principle adopted in W.P.No.23823 of 2023 to resolve 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 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



WEB COPY



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 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 of service as on 28.02.2006 would



WEB COPY



be entitled to regularisation dehors the nomenclature that is given to the appointment.”

23. So the rationale of the latest Full Bench judgment in the above judgment in my view would override the earlier Division Bench judgment which deprived the benefit of including the past services of the village assistant for pensionary benefit. In the back ground of the above discussion I feel the past services of the petitioner's husband should be considered as full-time for the following two reasons:

1. by virtue of the description of his services in the very appointment order.

2. the nature of the services executed by him as a Village Assistant without prescribing any particular part time work hours.

24. In the background of the thrust added through the judgement 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



WEB COPY

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 the computation of past services.

25. Accordingly, if the petitioner's husband's past services are computed from the date of his appointment i.e., 23.04.1984 by giving 50% allowance along with service rendered from 01.06.1995 and till the date of his death, the total qualifying service would come to 11 ½ years. So the petitioner's husband comes under the qualification to get pension and hence, the petitioner's family pension can be fit under Rule 9(2) of Village Assistant Pension Rules, 1995.

26. The petitioner has also sought the relief of declaring the Rule 9(3) as illegal. Since 9(3) is not applicable to the case of the petitioner in view of the above stated reasons, the said exercise is unnecessary and the issue is left open to be dealt in any future cases if any, before the appropriate forum.



WEB COPY

27. In view of the above said reasons, these Writ Petitions are **disposed** and the respondents are directed to compute the qualifying service of the petitioner's husband by adding 50% of his past services from 23.04.1984 to 31.05.1995 with his services rendered from 01.06.1995 to 06.08.2001 in order to accommodate the petitioner's family pension to be granted under Rule 9(2) and sanction the same and issue orders accordingly within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petitions are closed.

15.03.2024

Speaking order

Index : Yes

Internet : Yes

Neutral : Yes

gsk/jrs



WEB COPY

- To
1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Revenue and Disaster Management Department,
Secretariat, Chennai - 9.
 2. The Principal Commissioner and
Commissioner of Revenue Administration,
Ezhilagam, Chepauk,
Chennai - 5.
 3. The Revenue Divisional officer,
Virudhachalam, Cuddalore District.
 4. The Tahsildar,
Taluk Office,
Tittagudi, Cuddalore District.
 5. The Accountant General (A&E),
Teynampet, Chennai - 18.



WEB COPY



R.N.MANJULA, J.

gsk

W.P.Nos.12033 & 19550 of 2020
and
W.M.P.Nos.13989 & 13990 of 2021

15.03.2024