



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

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	19.12.2023
Pronounced on	18.03.2024

CORAM:

THE HON'BLE Ms.JUSTICE **R.N.MANJULA**

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

and

WMP.No.23277 of 2020

R.Sabapathy ... Petitioner in WP.No.18734 of 2020

V.Shanmugavelu ... Petitioner in WP.No.18738 of
2020

Vs.

1 The Secretary to Government of Tamilnadu,
Finance Department, (Pension)
Fort St. George, Chennai-000009.

2. The Accountant General,
No 361, Anna Salai,
Chennai-600 015.

3. The Assistant Director (Pension),
Municipal Local Fund Audit Directorate,
Kuralagam, 4th Floor, Chennai-600 108.



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4. The Commissioner of Municipal
Administration and Water Supply Department,
Chepauk, Chennai-600 005

5. The Commissioner,
Thiruvavarur Municipality,
Thiruvavarur. ...Respondents in WP.Nos.18734 & 18738 of 2020

Prayer in WP.No.18734 of 2020: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus against the respondents to count the petitioner's half of the past services rendered by him in the post of Village Head Man from 01.08.1974 to 14.11.1980 (i.e., 6 years 3 months and 13 days) and to revise the pension and pensionary benefits along with arrears.

Prayer in WP.No.18738 of 2020: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus against the respondents to count the petitioner's half of the past services rendered by him in the post of Village Head Man from 01.04.1976 to 14.11.1980 (i.e., 4 years 7 months and 14 days) and to revise the pension and pensionary benefits along with arrears.

W.P.No.18582 of 2020

1. P.Swaminathan



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2.T.V.Narayanan

3.S.Subramniyan

4.D.Palanisami

5.N.Ravi Krishnan

6.R.Rajendran

7.R.Nagarajan

8.A.Ponnusamy

9.K.S.Mani

10.V.Ranganathan

11.S.Thirumoorthy

12.R.Shanmuganatham

13.M.Sethupathi

14.N.Kumar

15.T.Sivasubramanian

16.G.Jeganathan

7.V.M.Velayudham

18.G.Kriahnaraj

19.T.Nithayan

....

Petitioners

Vs.

1.The Additional Chief Secretary to Government
Revenue Department
The Secretariat, Chennai-09.

2.The commissioner of Revenue Department,



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Ezhilagam, Chennai-05.

3.The Accountant General (A&E)
361, Anna Salai, Teynampet,
Chennai -18.

....

Respondents

Prayer in WP.No.18582 of 2020: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus against the respondents to take into account the entire period of service of petitioners from the date of their initial appointment as temporary Thalayaris / Village Assistants until 31.05.1995 followed by regularisation of such service from 01.06.1995 till the date of retirement as V.A.Os (Village Administrative Officer) for the purpose of calculation of pension as has been granted to similarly placed VA.Os vide G.O Ms No. 33 (Revenue Department) dated 25.01.2010 and G.O.Ms.No. 173 (Revenue Department) dated 29.05.2014 by way of implementing the Supreme Court order to that effect vide S.L.P Nos. 21638 of 2009, and 26586 to 26593 of 2012 besides directing the respondents 2 and 3 to fix their revised pension and pay it to the petitioners within time frame.

WP.No.18742 of 2020

1.S.Radha

2.S.Ganesan

3.R.Ravikumar

....

Petitioners



W.P.Nos.18734, 18582, 18738, 18742 of 2020 &
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Vs.

- 1.The Additional Chief Secretary to Government
Revenue Department
The Secretariat, Chennai-09.
- 2.The Commissioner of Revenue Department,
Ezhilagam, Chennai-05.
- 3.The Accountant General (A&E)
361, Anna Salai, Teynampet,
Chennai -18.

.... Respondents

Prayer in WP.No.18742 of 2020: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus against the respondents to take into account the entire period of service of petitioners from the date of their initial appointment as temporary Thalayaris / Village Assistants until 31.05.1995 followed by regularisation of such service from 01.06.1995 till the date of retirement as V.A.Os (Village Administrative Officer) for the purpose of calculation of pension as has been granted to similarly placed VA.Os vide G.O Ms No. 33 (Revenue Department) dated 25.01.2010 and G.O.Ms.No. 173 (Revenue Department) dated 29.05.2014 by way of implementing the Supreme Court order to that effect vide S.L.P Nos. 21683 of 2009, and 26586 to 26593 of 2012 besides directing the respondents 2 and 3 to fix their revised pension and pay it to the petitioners within time frame.



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W.P.No.11055 of 2021

K.Srinivasakrishnan

...

Petitioner

Vs.

1.The Additional Chief Secretary to Government
Revenue Department
The Secretariat, Chennai-09.

2.The Commissioner of Revenue Department,
Ezhilagam, Chennai-05.

3.The Accountant General (A&E)
361, Anna Salai, Teynampet,
Chennai -18.

....

Respondents

Prayer in WP.No.11055 of 2021: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus against the respondents to take into account the entire period of service of petitioner from the date of their initial appointment as temporary Thalayaris / Village Assistants until 31.05.1995 followed by regularisation of such service from 01.06.1995 till the date of retirement as V.A.Os (Village Administrative Officer) for the purpose of calculation of pension as has been granted to similarly placed V.A.Os vide G.O Ms No. 33 (Revenue Department) dated 25.01.2010 and G.O.Ms.No.173 (Revenue Department) dated 29.05.2014 by way of implementing the Supreme Court order to that effect vide S.L.P Nos. 26586 to 26593 of 2012 besides directing the respondents 2 and 3 to fix their revised pension and pay it to



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the petitioners within time frame.

WP.No.26256 of 2021

S.Saminathan

...

Petitioner

Vs.

1.The Additional Chief Secretary to Government
Revenue Department
The Secretariat, Chennai-09.

2.The Commissioner of Revenue Department,
Ezhilagam, Chennai-05.

3.The District Collector,
Thiruvarur District, Thiruvarur. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus to direct the 1st respondent to pass orders to count 10 years of services of the petitioner in the cadre of Thalaiyaari from 1/9/1983 to 31/5/1999 for the purpose of calculation of pension and to send a revised pension proposal to the office of the Accountant General, Chennai within time frame as even implemented through G.O. (Ms)No. 33 dated 25/1/2010/granting pension for the entire period for a similar village assistant.

W.P.No.11512 of 2021

M.Subramaniyan

...

Petitioner

Vs.

1.The Additional Chief Secretary to Government



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Revenue Department
The Secretariat, Chennai-09.

2.The Commissioner of Revenue Department,
Ezhilagam, Chennai-05.

3.The Accountant General (A&E)
361, Anna Salai, Teynampet,
Chennai -18.

.... Respondents

Prayer in WP.No.11512 of 2021: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus against the respondents to take into account the entire period of service of petitioner from the date of their initial appointment as temporary Thalayaris / Village Assistants until 31.05.1995 followed by regularisation of such service from 01.06.1995 till the date of retirement as V.A.Os (Village Administrative Officer) for the purpose of calculation of pension as has been granted to similarly placed V.A.Os vide G.O Ms No. 33 (Revenue Department) dated 25.01.2010 and G.O.Ms.No. 173 (Revenue Department) dated 29.05.2014 by way of implementing the Supreme Court order to that effect vide S.L.P Nos. 26586 to 26593 of 2012 besides directing the respondents 2 and 3 to fix his revised pension and pay it to the petitioners within time frame.

In all WPs.

For Petitioners : Mr. K.Ravi Anatha Padmanabhan,
Senior counsel for Ms.P.Rajalakshmi



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in WP.Nos.11055, 26256 &11512 of 2021
and WP.Nos.18582/2020, 18742/2020

: Mr.V.Raghupathi
in WP.Nos.18734/2020 & 18738 of 2020

For Respondents : Mr.Haja Nazirudeen,
Additional Advocate General-I
Assisted by Mr.T.Chezhiyan,AGP
for RR1 in WP.No.18734/2020
for RR1,3 & 5 in WP.No.18738/2020
for RR1 & 2 in WP.Nos.11512/21,
18742/2020, 11055/21 & 1858/2020
for RR1 to 3 in WP.No.26256/21
: Mr.P.Srinivas, Senior Counsel for R5
in WP.No.18734/2020
:Mr.T.Chezhiyan, Senior Counsel for R5
in WP.No.18738/2020
:Mr.T.S.Selvarani, Senior Counsel
for R2 in WP.Nos.18734/2020,
18738/2020, 11512/2020 for R3
:Ms.Hema Muralikrishnan for R3 in
WP.No.11055/2021 & 18582/2020

COMMON ORDER

The petitioners have filed the above Writ Petitions, praying for the issuance of a Writ of Mandamus to direct the respondents to take into account the entire period of service of the petitioners from the date of their initial appointments as temporary Thalayaris / Village Assistants



until 31.05.1995 followed by regularisation of such service from 01.06.1995 till the date of their retirement as V.A./O.A./V.A.Os, respectively, for the purpose of calculation of pension.

2. The petitioners were working as Thalaiyaris on a consolidated pay up to 31.05.1995. Most of them were appointed as Thalayaris during the period between 1980 to 1990. The matter involved in these Writ Petitions relate to the claim for entitlement of their past services of the petitioners as Thalaiyaris/ Village Assistants from the date of their appointments till they were regularised on 01.06.1995, for the purpose of calculating their pension. The petitioners are of three types and for the sake of convenience the table given by the learned counsel for the petitioners can be extracted below. It contains the following 3 types:

- I. Those who retired as Village Assistants
- II. Those who retired as Office Assistants after getting promoted from village assistants.
- III. Those who retired as Village Administrative Officer after getting promoted from Village Assistants.



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s.no	Wp no	Name of the petitioner	Date of initial appointment as Talaiyari/village munsiff	Date of regularization	Date of retirement	Remarks (falling under whether category I,II or III)		Post abolishe d on	No of years of service
1	18734/2020	R. Sabapathy	25.02.1974	01.06.95	14.11.1980	I	VA		6y3m13d
2	18582/2020	1.P.Swaminathan 2.T.V.Narayanan 3.S.Subramnayan 4.D.Palanisami 5.N.Ravi Krishnan 6.R.Rajendran 7.R.Nagarajan-vao 8.A.Ponnusamy 9.K.S.Mani 10.V.Ranganathan 11.S.Thirumoorthy 12.R.Shanmuganatham 13.M.Sethupathi 14.N.Kumar 15.T.Sivasubramanian-vao 16.G.Jeganathan 17.V.M.Velayudham 18.G.Kriahnaraj 19.T.Nithayan	25.04.1984 26.12.1983 12.10.1989 06.03.1981 22.10.1992 06.12.1986 23.12.1982 01.01.1986 17.09.1986 19.01.1984 12.03.1982 01.01.1985 01.01.1992 26.09.1983 01.08.1984 01.08.1984 30.09.1987 12.10.1989 26.10.1983	06.07.95 w.e.f 01.06.95	31.05.2018 30.04.2018 31.07.2017 31.05.2018 28.02.2019 31.12.2018 31.09.2019 30.04.2019 30.04.2020 31.12.2018 28.02.2019 31.05.2019 30.06.2018 31.05.2019 29.02.2020 29.02.2020 30.04.2020 30.08.2019 31.01.2016	III	VAO	22y 8m 29d 23y 27d 22y 5m 30d 22y 8m13d 23y11m27d 23y1m30d 24y1m30d 24y3d 25y28d 23y1m30d 23y1m27d 23y8m13d 23y 4m 29d 23y 8m 13d 23y 11m 28d 23y 11m 28d 25y 28d 247 6m 29d 21y 1m 29 d	
3	18738/2020	V.Shanmugavelu	23.03.1976	01.06.95	14.11.1980 (relived)	I	Village Headman	1981	
4	18742/2020	1.S.Radha 2.S.Ganesan 3.R.Ravikumar	30.04.1984 16.08.1984 23.09.1981	01.06.95	31.03.2020 31.07.2019 31.05.2019	II II II	OA OA OA		25y 1m 29 d 24y 1m 30d 24y 1m 30d
5	11055/2021	K.Srinivasakrishnan	31.05.1995	01.06.95	30.04.2018	I	VA		23y 1m 29d
6	26256/2021	S.Saminathan	01.09.1983	01.06.95	31.05.2014	I	VA		19y 1m 30d
7	11512/2021	M.Subramaniyan	...1983	01.06.95	30.01.2020	II	OA		25y 1m 30d



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3.All the petitioners were originally appointed as Thalayaris. Even though many of the petitioners were appointed as Thalaiyaris during the years 1980 to 1985, those petitioners who had completed 10 years of continuous service as on 31.05.1995 were brought under the regular time scale under G.O.Ms.625, Revenue Department, dated 06.07.1995 with effect from 01.06.1995. Further, the name of the Thalayari was renamed as 'Village Assistant'. Those petitioners who continued their services and who had the educational qualification of VIII standard pass were given with the option to be promoted as Office Assistant and those who have passed X standard were given with the option to be promoted as Village Administrative Officers before their retirements.

4. These petitioners have filed these Writ Petitions by claiming that their entire period of service from the date of their initial appointment as Thalaiyari till 31.05.1995 [the pre-regularised period] should also be included while calculating the qualifying period of service for the purpose of pension and other retirement benefits. The pre-regularised period, i.e., until 31.05.1995 was not allowed to be included in the service of the



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petitioner and hence, no pension was granted.

5. Heard, Mr.K.Ravi Anatha Padmanabhan, learned Senior counsel and Mr.V.Raghupathi learned counsel for the petitioners and Mr.Haja Nazirudeen, learned Additional Advocate General-I, Mr. Mr.T.Chezhiyan, learned Additional Government Pleader, Mr.P.Srinivas, learned Senior Counsel, Mr.T.Chezhiyan, learned Senior Counsel, Mr.T.S.Selvarani, learned Senior Counsel, Ms.Hema Muralikrishnan learned counsel for the respective respondents and perused the materials available on record.

6. Mr.K.Ravi Anantha Padmanabhan, learned Senior counsel appearing for the petitioners submitted that only 50% of the pension was granted for the regularised period from 01.06.1995 till their date of promotion as Office Assistant/Village Administrative Officer, even though those periods fall under the regularised period. Those who retired as Office Assistants / Village Administrative Officers were given 100% pension by counting their services only from the date of their promotion as Office Assistant or Village Administrative Officer.

7. Attention was drawn to the case of one Raman Nair, who filed a



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Writ Petition in W.P. (MD) 1760 of 2005, claiming to include his entire period of service from 21.07.1975 for the purpose of getting a 100 % pension. The said Writ Petition was allowed on 24.08.2007. The State has filed an appeal in W.A (MD) No. 16/2009, and that was dismissed. The State has filed SLP No. 21683 of 2009, which was also dismissed. This resulted in the issuance of G.O.Ms.No.33, Revenue Department, dated 25.01.2010 by allowing the entire period of service of Raman Nair to be included in the total number of years of service for calculating 100% of the pension.

8. One Ponnu Gurusamy and nine others have filed a Writ Petition in WP(MD).Nos.11094 to 11101 of 2008 and sought the same relief and those petitions were also allowed. Appeals filed by the State in W.A.[MD]Nos.204 to 211 of 2011 to challenge the above orders were also dismissed on 04.02.2011. SLP in 26586 to 26593 of 2012 preferred challenging the same also dismissed on 24.08.2012. This resulted in the issuance of G.O.Ms.No.173, dated 29.05.2015 for implementing the orders issued in the Writ Petition and thereby counting their entire period



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of service for the purpose of pension.

9. Batch of cases in W.P.(MD)Nos.6995 to 6998 of 2015 and WP.(MD). Nos.7446 to 7449 of 2016 were filed seeking the same relief and they were also allowed. The State filed Appeals in W.A(MD).Nos.1044 to 1051 to 2017 and they were dismissed and no SLPs was preferred. G.O.Ms.473 dated 03.12.2018 was issued for calculating 100 % pension of those petitioners.

10. For easy reference Mr. Ravi Ananda Padma Naban has given the crux of the proceedings and the orders passed as shown in the table below:

W.P.No.	W.A.No.	S.L.P.No.	Implementation G.O.
1716/2005 filed by one Raman Nair. Allowed by Order dt: 24/8/2007	State filed W.A.(MD) 16/2009 against W.P. 1716/2005; Lost. In Paras 8 to 10, T.N. Village Asst. Pension Rules 1995 discussed to Arrive at 100% pension eligibility By DB of Acting Chief Justice and Mr. Justice M.	SLP 21683/2009 filed by State. W.A(MD) 16/2009 order confirmed By SC. [Pages 21 to 23 ADTS]	GO No. 33 granting 100% pension by taking into account entire period of service of RAMAN NAIR. [Pages 18-19 ADTS]



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W.P.No.	W.A.No.	S.L.P.No.	Implementation G.O.
	Jaichandran [Pages 13 to 1'7 of Addl. Common Typed set = ADTS]. Held, Letter of appt. Should say its Part-time but not.		
W.P.(MD) Nos. 11094 to 11101/2008 filed by Ponnu- Gurusamy and 9 Others. Order dt: 6/3/2009. Wps allowed.	State filed W.A.(MD) Nos. 204 to 211 of 2011. Dismissed. Order dated 4/2/2011 by the then DB.	State filed SLP 26586 to 26593/2012 All SLPs dismissed by order dated 24/8/2012. [Page 20 ADTS]. SLPs dismissed on merits also.	G.O. 173 dt: 29/5/2014 issued granting 100% pension for the entire period. [Pages 21-23 ADTS] In Para 5 of G.O. State apprehended it would invite Similar orders; cannot be the basis to To reject lawful relief due to petitioners.
W.P.(MD) Nos. 6995 to 6998 Of 2015 and W.P.(MD) Nos. 7446 to 7449 of 2016 filed by G. Ponnann & 7 Others. WPs Allowed based on above Orders.	State filed W.A.(MD) Nos. 1044 to 1051 of 2017. All dismissed relying on the above W.A.(MD) No. 16/2009 order. Separate orders dt: 10/8/2017 by DB of Justice K.K. Sasidharan & G.R. Swaminathan, J [Pages 24 to 44 ADTS]	NO SLP FILED (anticipating dismissal as before)	G.O. No. 473 dt. 3/12/2018 issued granting 100% pension for the entire period. [Pages 45 to 47 ADTS]

11. Since the retired persons are scattered all over the State, those who have filed the Writ Petitions could not have the knowledge about the verdict of the court and the consequent issuance of the Government orders in favour of those individuals who had won the cases before the court. Once again, these issues got the attention of the Courts. The focus



shifted from the Village Assistant Pension Rules 1995 to the Tamil Nadu Pension Rules 1978, with special reference to rule 11(2) and 11(4) of Tamil Nadu Pension rules 1978.

12. Rule 11(2) and 11(4) of Tamil Nadu Pension Rules, 1978 are extracted hereunder:

“11. Commencement of qualifying service -

...

(2) Half of the service paid from contingencies shall be allowed to count 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.

(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.

(4) Half of the service rendered by State Government employee under non-pensionable establishment shall be allowed to be counted for pensionary benefits along with regular service under pensionable



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establishment subject to the following conditions.

- (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 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"

13. According to Rule 11(4) of the Tamil Nadu Pension Rules 1978, half of the services rendered by a State Government employee in a non-provisionalized service on consolidated pay, honorarium or daily wages on or after 01.01.1961 shall be counted as qualifying service for the retirement benefits along with the regular services, provided he was absorbed into regular service on or before 01.04.2003.

14. One of the conditions for the above Rule is that the employee



ought not to have been a part-time employee but a full-time employee.

However, in a judgment in W.A.(MD).No.370 of 2019, dated 22.10.2019 passed by the Hon'ble Division Bench of the Madurai Bench of this Court in ***K.Velmayil Vs. The Secretary to Government, Revenue Department, Chennai and others***[reported in ***2019 SCC OnLine Mad 24562***], it is held that mere reference to Rule 3 of the conduct rules, which grants permission for the Village assistants to take up a part-time work or occupation, will not make their work as village assistants part-time.

15. Tamil Nadu Village Assistant Pension Rules 1995, lays down the period of service for the purpose of calculating pension as under:

“7.(i)A Village Assistant shall be eligible for pension if he has rendered a total qualifying service of 10 years or more and discharged or retired as per rules and orders.

(ii) Pension shall be calculated at 50% of average emoluments drawn in the last 10 months before retirement for qualifying service of 66 half years and proportionate pension shall be paid for qualifying service of less than 66 half years subject to a minimum of Rs.900/-

8.(i) Village Assistant who has completed 5 years of qualifying service and has become eligible for service gratuity on his retirement be granted death cum retirement gratuity at the rate of $\frac{1}{4}$ th of emoluments for each completed six months period of qualifying service, subject to a maximum of 16 $\frac{1}{2}$ time of monthly emoluments plus a special pension of Rs.150/- per month with attendant benefits.

(ii) On retirement or discharge as per rules and orders if



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qualifying service falls short of 10 years but not less than 5 years a gratuity equal to of a months emoluments for every completed, six monthly period of service shall be paid in addition to the retirement gratuity admissible plus a special pension of Rs. 150/- per month with attendant benefits.

Note:

Village Assistants who have retired during the period from 1.6.95 to 31.5.2000 Service gratuity was sanctioned at the rate of half of the monthly emoluments for every year of total service

9 (i) Family pension at 30% 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 le at 50% of last pay drawn shall be allowed up to 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 up to 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 D.A. In the event of death of Village Assistant within 10 years of service.

10. The service put in by the Village Assistant before he has completed 18 years of age shall not qualify for pension.”

16. By highlighting the above rules along with the full time status given to the nature of the work of the village Assistant through the above said judgement, the learned counsel for the petitioners claimed that all those pre-regularised services of Village Assistants are eligible to be



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counted for the purpose of pension.

17. But, Mr.Haja Nazirudeen, learned Additional Advocate General-I appearing for the government respondents did not concede but asserted that the petitioners who have been appointed as Thalaiyaris are only part-time employees and hence they are not entitled to include 100% of pre-regularized services for the purpose of pension.

18. In the matter referred to a Division Bench of Madurai bench of this Court in *K.Velmayil (cited supra)*, the following issue came to be decided:

" to decide the question related to applicability of Rule 11(4) of Tamil Nadu Pension Rules, 1978 to Village Assistants who were appointed as part-time Thalaiyaris and whose services were regularised with effect from 1/6/95 or later ".

19. The issue does not refer about the Tamil Nadu Village Assistants Pension Rules-1995 but it refers to Tamil Nadu Pension Rules-



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1978. However, it is held that the Village assistants have to be considered as full time employees in view of the nature of their work and hence 50% of their past services before regularisation can be included for pension as per Rule 11(4) of the Tamil Nadu Pension Rules -1978.

20. In subsequent judgements, the focus got shifted from Tamil Nadu Village Assistants Pension Rules to Tamil Nadu Pension Rules-1978. In the counter filed by the State in **W. P.(MD) 11055 of 2021, dated 25.01.2022 (*Jegan.G.Vs.The Managing Director and others*)**, the respondent has admitted that the rules applicable to the Village Assistants is Tamil Nadu Village Assistant Rules 1995 and not Tamil Nadu Pension Rule-1978.

21. It is submitted by Mr. Ravi Ananda Padmanaban that during the hearing of the said appeal, the earlier government orders were not brought to the attention of the Division Bench. But, Mr. Haza Nazruddin invited the attention of this Court to the yet another judgement of the Hon'ble Division Bench of the Madurai Bench of this Court dated



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26.02.2021 passed in W. A.(MD)No.1629 of 2018 and batch [*The State of Tamil Nadu and others Vs. E.Balachandran*] reported in **2021 SCC OnLine Mad 982**. In the said case, another Division Bench of this Court has held that but for the issuance of the G.O.Ms. 625, Revenue Department 1995 government order dated 06.07.1995, the part time status of the Village Assistant could not have been converted into full time employment and hence they can not take advantage and claim that their past services should be counted as full time service and hence they are not entitled to count even 50% of their past services.

23. Mr.Ravi Ananda Padmanaban submitted that the above finding is contrary to the earlier division bench judgements which accepted the past services of Thalaiyari as full time. It is further submitted that the Government's challenge in respect of addition of 50 % services had been decided against the government up to the Hon'ble Supreme Court.

24. So far as adding 50 % of the past services for village assistants who have opted to be absorbed as Village Administrative Officer or Office Assistants, there is no confusion and the following clarification was given by the Government by stating that they would come under the purview of



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Tamil Nadu Pension Rules 1978. Even in those cases, only those services rendered in full time capacity is allowed to be included. For a better clarity the clarification issued through the Government letter No.12764/Ser.8(1)/2018-2, dated 20.12.2018 and letter No.39161/Ser.8(1)/2018-5, dated 20.11.2019 of Revenue and Disaster Management Department, Services Wing, Secretariat, Chennai has been extracted as below:

1	<i>If a Village Assistant is promoted to the post of Village Administration Officer prior to 01.04.2003, whether the pensionary benefits are admissible as per Tamil Nadu Pension Rules, 1978 on the analogy that Village Assistants are non pensionable (prior to issue of G.O.9) as per G.O.118</i>	<i>Village Assistants in the Revenue Department have been brought under regular establishment from part time to full time with effect from 01.06.1995 and they are paid salary in the non-standard scales of pay, with other usual allowances under orders in force, and these posts are non-pensionable which is governed by Tamil Nadu Village Assistant Pension Rules, 1995. In view of the above position it is clarified that half of the qualifying services rendered in the post of full time Village Assistant with effect from 01.06.1995 which is covered under Tamil Nadu Village Assistants Pension Rules, 1995 may be counted when such service is followed by regular Village Administrative Officer Service, by promotion prior to 01.04.2003 which is governed by Tamil Nadu Pension Rules, 1978 for the purpose of pensionary benefits to the conditions laid down in Rule 11(3) of Tamil Nadu Pension Rule, 1978.</i>
2	<i>If a Village Assistant is promoted to the post of Village Administrative Officer after to 01.04.2003, then the modality as to how his services are to be reckoned for pensionary benefits.</i>	<i>An Employees who held a post with pensionable service under Tamil Nadu Village Assistants Pension Rules, 1995 and promoted subsequently in another post i.e., after 01.04.2003 by recruitment by transfer (promotion) i.e., Village Assistant to Village Administrative Officer, 50% of service rendered by the employee in the post of Village Assistant and the entire service of Village Administrative Officer are to be reckoned for pensionary benefits under Tamil Nadu Pension Rules, 1978.</i>

As per the Tamil Nadu Village Assistant Pension Rules 1995 it has defined as



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Chapter I General:-

(ii) They shall be deemed to have come into force on 01.06.1995

Chapter II Pension & Gratuity:-

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

Therefore the petitioner is entitled to count their service from 01.06.1995 from the date of the regularisation of the post of Village Assistant, for the purpose of calculating pension and any further claim beyond that is impermissible under law. "

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:

(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



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 petitioner 9 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: (SCC pp. 750-51, para 8)

"Generally speaking, the mere fact that the respondent Authority has



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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 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 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



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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, 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 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



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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 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 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 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.

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*



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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



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



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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 be entitled to regularisation dehors 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



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.

35. In view of the above discussions these batch of writ petitions are disposed with the following observation and directions:

- (i) Those who lost their job on 14.11.1980 and who never got re employment were given with a special pension with effect from 05.12.1986. Hence, there is no question of granting any further relief for them than what has already been granted.
- (ii) For those village assistants whose services have been regularised as on 01.06.1995 but continued to be in service, till retirement, half of their past services shall be included along with the whole of their services rendered subsequent to their regularisation till retirement and computed as qualifying years of service for the purpose of pensionary benefit.
- (iii) The respondents are directed to consider the representations of



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all those petitioners who are qualified as above (ii), for inclusion of 50% of their past services for the purpose of pensionary benefits and pass revised orders for sanctioning and disbursing the same within a period of 8 weeks from the date of receipt of the copy of this order.

- (iv) No costs. Consequently, the connected miscellaneous petitions are closed.

18.03.2024

Internet : Yes
Speaking
Neutral Citation : Yes
jrs

- To
- 1 The Secretary to Government of Tamilnadu,
Finance Department, (Pension)
Fort St. George, Chennai-000009.
 2. The Accountant General,
No 361, Anna Salai,
Chennai-600 015.
 - 3 The Assistant Director (Pension),
Municipal Local Fund Audit Directorate,
Kuralagam, 4th Floor, Chennai-600 108.



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4. The Commissioner of Municipal
Administration and Water Supply Department,
Chepauk, Chennai-600 005

5. The Commissioner,
Thiruvavarur Municipality,
Thiruvavarur.



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R.N.MANJULA, J.

jrs

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and
WMP.No.23277 of 2020

18.03.2024