IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.01.2025

PRONOUNCED ON : 04.04.2025

CORAM

THE HON'BLE MR. JUSTICE **BATTU DEVANAND**

W.P.Nos.16606, 14895, 15221, 17319, 18418, 20086, 20174, 20175 and 22601 of 2018 and WMP.No.16606 of 2018

W.P.No.16606 of 2018

1. S.Sornam
2. E.Ramanibal
3. P.Radha
4. T.Y.Maharani
5. S.Subbulakshmi
6. A.Thaherunisha Begum
7. V.Devamani
8. V.Loganathan
9. C.Rameswari
10. R.Thilagavathy
11. M.Fathima Angel ... Petitioners

Vs.

1. The Government of Tamilnadu
   represented by the Secretary to the Government,
   Finance (Pay Cell) Department,

Fort St. George, Chennai 600009.
2. The Collector,
Chennai, Chennai District.
3. The Commissioner,
Corporation of Chennai,
Ripon Building, Chennai 600003. ... Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the first respondent in G.O.Ms.No.314, Finance (Pay Cell) Department dated 25.10.2017 and quash the same and direct the respondents to revise the pension and family pension of the petitioners by adopting the same methodology as adopted for the employees on time scale of pay prescribed in G.O.Ms.No.313, Finance (Pay Cell) Department, dated 25.10.2017 and give notional effect from 01.01.2016 or date of entitlement to pension/family pension whichever is later with monetary benefit from 01.10.2017 and grant all consequential benefits.

For Petitioners	:	Mr.P.Rajendran
For RR1 & 2	:	Mr.J.Ravindran, Additional Advocate General assisted by Mr.V.Baranidharan, Additional Government Pleader & Mr.Azizulla Khan, Government Advocate
For R3	:	M/s.T.Rama Devi

COMMON ORDER

These Writ Petitions have been filed to quash the impugned order of the first respondent in G.O.Ms.No.314, Finance (Pay Cell) Department dated 25.10.2017 and direct the respondents to revise the pension and family pension of the petitioners by adopting the same methodology as adopted for the employees on time scale of pay prescribed in G.O.Ms.No.313, Finance (Pay Cell) Department, dated 25.10.2017 and give notional effect from 01.01.2016 or date of entitlement to pension/family pension whichever is later with monetary benefit from 01.10.2017 and to grant all consequential benefits.

2. **The brief facts as per the averments made in the affidavit of the Writ Petitions:**

i) The petitioners are retired Noon Meal Organisers/Anganwadi Workers, Child Welfare Organisers, Cooks, Cook Assistants and Anganwadi Helpers respectively. Some of them retired before 01.01.2016 and others retired after 01.01.2016. In the meanwhile, the Government of

Tamil Nadu issued G.O.Ms.No.40, Finance (Pay Cell) Department, dated 22.02.2017 constituting an Official Committee to examine and make recommendations on revision of scales of pay and allowances for State Government employees and teachers including employees of local bodies and revision of pension, family pension and retirement benefits based on the decision of the Government of India on the recommendations of the 7th Central Pay Commission and the High Level Committee constituted by it for revision of allowances other than dearness allowance. The official committee submitted its report to the Government on 27.09.2017 and the Government accepted the recommendations of the Official Committee, 2017 and issued G.O.Ms.No.303, Finance (Pay Cell) Department, dated 11.10.2017.

ii) By the said Government Order, the existing system of pay band and grade pay applicable to the State Government employees and teachers including employees of local bodies were replaced by a new system of level based Pay Matrix in a manner similar to that which was adopted by the Government of India for its employees. Under Schedule-I and Schedule-II of the Tamil Nadu Revised Pay Rules 2017, the pay levels for Government employees on time scales of pay and employees on special time scales of pay respectively corresponding to their grade pay under the existing system are indicated. Schedule III and Schedule IV contain the Pay Matrix for employees on time scales of pay and employees on special time scales of pay respectively. In paragraph 7 of the said G.O., it was stated that fitment factor of 2.57 shall be applied uniformly to all employees while fixing pay of existing employees in the Pay Matrix, irrespective of the present grade pay or corresponding new levels. For the purpose of fixing pay in the pay matrix, Pay plus Grade Pay of an employee at any level as on 01.01.2016 (Pay in the pay band plus Grade Pay) shall be multiplied by a factor of 2.57. In paragraph 21 of the said G.O., it was directed that the methodology that has been adopted in arriving at the Pay Matrix for the employees on the time scales has to be adopted for the employees on special time scales of pay. The posts of Noon Meal Organisers, Cooks and Cook Helpers are all under Special Time Scales of pay. It was further stated in paragraph 22 of the said G.O. that the employees on special time scale of pay shall be granted the same percentage of dearness allowance as applicable to employees on time scales of pay from time to time and these employees shall also be entitled for House Rent Allowance, City Compensatory

Allowance, Medical Allowance, and other Allowances along with annual increment as applicable to the employees on time scales of pay from time to time.

iii) Thereafter, the Government issued orders in G.O.Ms.No.313, Finance (Pay Cell) Department, dated 25.10.2017 revising pension and family pension and retirement benefits based on the recommendations of the Official Committee 2017. Paragraphs 5 to 13 of the said order apply to the employees who had retired or died before 01.01.2016 and paragraphs 15 to 25 apply to the employees who had retired or died on or after 01.01.2016.

(a) In paragraph 5 of the said order, it was directed that the pension/family pension including enhanced family pension relating to the employees who retired or died while in service before 01.01.2016 shall in the first instance be revised in the following manner:

"The existing pension/family pension/enhanced pension family pension as on 31.12.2015 including the commuted portion but excluding additional pension applicable to pensioners/family pensioners of age 80 years and more shall be multiplied by a factor of 2.57 and rounded off to the next

higher ten rupee to arrive at the revised pension/family pension/enhanced family pension"

(b) In paragraph 15 of the said order, it was stated that pension of a Government employee who retired on or after 01.01.2016 shall be determined as follows:

"full pension shall be 50% of the pay last drawn in applicable level in the revised pay structure (excluding dearness allowance but including dearness pay, if applicable" by the Government employee or 50% of the average emoluments drawn during the last 10 months of service rendered whichever is higher"

(c) In paragraph 30 of the said order, it was further stated that revision of pension and family pension as per the said order shall take notional effect from 01.01.2016 or date of entitlement to pension/family pension whichever is later and shall have monetary effect only from 01.10.2017.

iv) The Government issued another order in G.O.Ms.No.314, Finance (Pay Cell) Department dated 25.10.2017 revising special pension/special family pension/lump sum grant to the Noon Meal Workers, Anganwadi

Workers and Village Panchayat Secretaries. By the said order, the pension of Noon Meal Organiser was revised from Rs.1500/- to Rs.2000/- and the existing monthly pension of cooks/cook assistants was revised from Rs.1500/- to Rs.2000/-. The lump sum payment was revised from Rs.60,000/- to Rs.1 lakh in the case of Noon Meal Organisers and from Rs.25,000/- to Rs.50,000/- in the case of Cooks/Cook Assistants. It was further stated that the said order revising pension/family pension and lump sum amount shall take effect from 01.10.2017.

v) It can be seen from the above that in the matter of pay revision for the Special Time Scale posts, the Government followed the same methodology as followed in the case of Regular Time Scale Posts. However, in the case of revision of pension for the Special Time Scale posts, the Government has not applied the same methodology as applied in the case of Regular Time Scale posts. Therefore, the said Government Order namely G.O.Ms.No.314, Finance (Pay Cell) Department dated 25.10.2017 is discriminatory, violative of Articles 14 and 16 of the Constitution of India and liable to be set aside. Hence, the present Writ Petitions have been filed.

3. Averments in the counter affidavit of respondent No.1:

i) It is stated that certain categories of posts such as Noon Meal Organisers, Cooks and Cook Assistants have been conferred with different special time/non-standard scale of pay and their scales of pay were also maintained outside the pay structure of standard scales of pay of regular employees. These categories were earlier on consolidated pay/fixed pay/honorarium and they they were shifted to special time scale. This has been done to accommodate employees who mostly do not have full time assignments like regular Government employees. Further, these employees are being granted the same percentage of Dearness Allowance revision as sanctioned to regular Government employees from time to time along with House Rent Allowance, City Compensatory Allowance, Medical Allowance, Other Allowances (Hill Allowance, Winter Allowance etc.) and annual increment, as applicable to regular Government employees.

ii) It is stated that all retired Noon Meal Organisers, Cooks and Cook Assistants were provided with a special monthly pension of Rs.700/-, Rs.600/- and Rs.500/- with effect from 15.09.2008. This special pension has been enhanced to Rs.1000/- per month irrespective of all categories with effect from 01.04.2013 and further enhanced at Rs.1500/- per month with effect from 01.02.2016. At the time of their retirement, a lumpsum amount of Rs.50,000/- was provided to the Noon Meal Organiser and Rs.20,000/- to the Cook and Cook Assistant. Further, this amount has been enhanced to Rs.60,000/- to the Noon Meal organisers and Rs.25,000/- to Cook and Cook Assistants since February 2016.

iii) It is further stated that the employees who retired in Special Time Scale of Pay do not come under the Tamil Nadu Pension Rules, 1978 and they are not eligible for Dearness Allowance as sanctioned to the pensioners who retired in Regular Time Scale of Pay. Hence, the orders issued in G.O.Ms.No.313, Finance (PC) Department, dated 25.10.2017 is not applicable to the petitioners. Therefore, in respect of their revision of Special Pension/Special Family Pension/Lumpsum Grant separate orders have been issued in G.O.Ms.No.314, Finance (PC) Department, dated 25.10.2017 and G.O.Ms.No.348, Finance (PC) Department, dated 28.11.2017. It is further stated that as per G.O.Ms.No.314, Finance (PC)

Department, dated 25.10.2017 the Special Pension of Noon Meal Organisers/Cooks/Cook Assistants have been revised from Rs.1,500/- to Rs.2,000/- and their Lumpusm Payment has been revised from Rs.60,000/- to Rs.1,00,000/- in the case of Noon Meal Organisers and from Rs.25,000/- to Rs.50,000/- in the case of Cooks/Cooks Assistants. Similar revision has been extended to all other employees in Special Time Scale of Pay vide G.O.Ms.No.348, Finance (PC) Department, dated 28.11.2017.

iv) It is stated that the employees in Regular Time Scale of Pay and in Special Time Scale of Pay and the pensioners/family pensioners coming under the Tamil Nadu Pension Rules, 1978 were getting Dearness Allowance revision sanctioned from time to time and Dearness Allowance sanctioned at 125% on 01.01.2016 were taken into account for the purpose of revision of their pay and pension with effect from 01.01.2016. Since the existing rate of Dearness Allowance is neutralised with the multiplying factor 2.57 with effect from 01.01.2016, the similar multiplying factor shall not be applied for revision of the Special Pension of the Pensioners who retired in Special Time Scale of Pay as they were not getting Dearness Allowance under the Tamil Nadu Pension Rules, 1978.

v) It is stated that the Noon Meal Organisers, Cooks and Cook Assistants are not regular employees and they do not come under Tamil Nadu Pension Rules, 1978. They were granted Special Pension only with effect from 15.09.2008, duly considering to provide livelihood after their retirement. Initially, they were provided Special Pension at Rs.700/-, Rs.600/- and Rs.500/-. Prior to revising this Special Pension at Rs.2000/- with effect from 01.10.2017, based on the recommendations of the Official Committee 2017, it was enhanced two times already i.e. to Rs.1000/- per month with effect from 01.04.2013 and further at Rs.1500/- per month with effect from 01.02.2016.

vi) It is further stated that the total number of Special Pensioners who retired as Anganwadi and Nutritious Meal Programmer are 87409. If their Special Pension is revised based on the fitment factor 2.57, there will be an additional financial commitment of Rs.195 Crore p.a. in respect of Special Pensioners of Anganwadi and Nutritious Meal Programmer alone. Further, if this fitment factor is extended to other Special Pensioners mentioned in G.O.Ms.No.348, Finance (PC) Department, dated 28.11.2017, it will lead to huge additional financial commitment to the State Exchequer.

4. <u>Averments in the counter affidavit of respondent No.2/Collector in W.P.No.18418 of 2018:</u>

i) It is stated that the post of noon meal organizer, cook and helper in the Anganwadi Centres are not created by any rule framed under Article 309 of Constitution of India and it is not a constituted service. Nevertheless, since the Government took over to maintain the entire scheme and had created separate ministry for administering the scheme bearing the entire cost of the scheme, including food provisions, utensils and overhead expenditure, it is nonetheless a public employment and they are scheme employees. The regular service benefits as that of government employees are not applicable to those scheme employees like the petitioners herein.

ii) It is further stated that all the Child Welfare Organizers, Child Welfare Assistants, Nutritious Meal Organizers, Cooks and Helpers employed under the programme, were made permanent part-time employees of the respective local bodies, viz., Panchayats, Panchayat Union, Municipalities and Municipal Corporations vide G.O.Ms.No.370, Backward Classes Welfare, Nutritious Meal Programme and Social Welfare

Department, dated 16.04.1989.

iii) It is further submitted that the entire service of noon meal workers are permanent part-time and these programme employees are not regular government servants and thus they are not paid the scale of pay applicable to regular Government servants and the schemes are non-pensionable establishment. Therefore, they are not covered by the Tamil Nadu Pension Rules. The petitioners are scheme employees and the Government after considering their nature of service conditions, granted special pension and lumpsum payment by the Government Order in G.O.Ms.No.314, Finance (PC) Department, dated 25.10.2017 in compliance of the recommendation of the Official Committee. Therefore, the petitioners cannot be treated as regular employees of State Government and they are not entitled under G.O.Ms.No.313 and the benefits granted under G.O.Ms.No.314 is not discriminatory.

5. <u>Averments in the counter affidavit of respondent No.2/District Collector in WP.No.20174 of 2018</u>:

i) It is stated that the service conditions of each of the petitioners and their quantum of wages and pension are entirely different from each others and there is no joinder of cause of action survive for the petitioners and hence the petitioners ought to have filed writ petitions independently.

ii) It is further stated that the revision of pay and pension of the Noon Meal Organisers and Anganwadi Workers being done on adhoc basis as per the recommendation of the Committee and they are never treated on par with Government servants either for appointments or for monetary benefits including pension. It is further stated that the petitioners are not entitled to claim pension benefits on par with the government employees as their nature of appointment and conditions of service are entirely different from the Government employees. Moreover, the petitioners are granted pension benefits on adhoc basis. G.O.Ms.No.303, Finance (Pay Cell) Department, dated 11.10.2017 has separately dealt with the revision of pay and pension of the Noon Meal Workers and Anganwadi workers as they are coming under the category of employees recruited under a scheme and it does not say that those employees are also entitled to benefit on par with the Government employees and teachers. Moreover, employees like petitioners are never treated as persons on special time scale of pay.

6. <u>Averments in the counter affidavit filed by the second respondent/Collector in WP.No.14895 of 2018:</u>

The petitioners were not governed by any service rules. There is no Rule governing their employment. The petitioners were only part time employees as Noon Meal Organisers and not full time employees. The very post of Noon meal Organiser is an adhoc/temporary/transitory one and not permanent nature**.** The petitioners were only part time employees under Special Time Scale and they are not entitled to get benefits as regular Government employees stated in G.O.Ms.No.313, dated 25.10.2017. Therefore, there is no ground made out to quash the G.O.Ms.No.314, Finance (Pay Cell) Department, dated 25.10.2017.

7. <u>Submissions of learned counsel for the petitioner:</u>

i) The learned counsel for the petitioners submitted that the Noon Meal Scheme was started on 01.07.1982 in rural areas and later it was extended to urban areas. The appointments are made by the District Collector following the Rule of Reservation. G.O.Ms.No.163, Social Welfare Department, dated 18.08.2010 contains the rules for appointment.

As per the G.O., only women would be appointed and 25% of the approved posts shall be filled up by widows/destitutes, who fulfil the age limit, educational qualification and distance criteria. The Noon Meal Organisers, Cooks and Cook Assistants retires from service after rendering 25 to 30 years.

ii) The learned counsel for the petitioners further submitted that the petitioners are being granted the same percentage of Dearness Allowance revision as sanctioned to regular Government employees from time to time along with House Rent Allowance, City Compensatory Allowance, Medical Allowance, etc., and annual increment as applicable to regular Government employees. He further submitted that since compassionate appointment, voluntary retirement, maternity leave, dearness allowance, house rent allowance, city compensatory allowance, medical allowance, annual increment etc., are granted to these employees as applicable to regular Government employees, the contention of the respondents that these employees are not regular employees cannot be accepted.

iii) The learned counsel further contended that the post of Noon Meal Organiser is a Civil Post and the said post is a substantive post and the holders of this post are entitled to get protection under Article 311 (2) of the Constitution of India. In support of his contention, he relied on the following judgments:

1) ***G.Periannan vs. the Government of Tamil Nadu and others*** reported in 2007 (3) CTC 806;

2) ***The District Collector, Villupuram vs. M.Eganathan*** in W.A.No.938 of 2014, dated 17.07.2017.

iv) The learned counsel for the petitioners further submitted that the petitioners are not falling under any of the exceptions as given in Rule 2 of the Tamil Nadu Pension Rules, 1978. Hence, prima facie the petitioners are covered by the provisions of the Tamil Nadu Pension Rules, 1978.

v) The learned counsel for the petitioners further contended that when the employees were in service, they were paid dearness allowance as paid to regular time scale posts. The same has been admitted in paragraph 7 of the counter affidavit filed by the first respondent, which reads as follows:

> *"7. ...... Further, these employees are being granted the same percentage of dearness allowance revision as sanctioned to regular Government employees from time to time along with House Rent Allowance, City Compensatory Allowance, Medical Allowance, other Allowances (Hill Allowance, Winter Allowance etc.) and annual increment as applicable to regular*

Government employee".

Therefore, when the Government grants Dearness Allowance on pay when they were in service, the non-payment of dearness allowance on pension is unjustified. The Government cannot take advantage of their own wrong and plead that the pension cannot be revised since they are not paid dearness allowance on pension. In support of his contention, the learned counsel for the petitioners relied on a judgment of the Hon'ble Supreme Court in ***The State of Gujarat & Ors. vs. Talsibhai Dhanjibhai Patel*** reported in 2022 LiveLaw (SC) 187, wherein it is held that the State cannot take advantage of its own wrong and deny pension to an ad-hoc employee, who retired after rendering more than 30 years of service.

vi) The learned counsel for the petitioners submitted that the petitioners are already receiving pension and it is not a new benefit and the issue is regarding the revision of existing pension. Since pension is deferred portion of the compensation (salary or wages), when pay is revised by following the same methodology as adopted in the case of regular pay, the revision of pension should also be done by following the same methodology. There is a correlation between pay and pension. Therefore, not following the same methodology as adopted in the revision of pay is unjustified and ureasonable.

8. <u>Submissions of learned Additional Advocate General appearing for respondents 1 and 2:</u>

i) He would submit that the Noon Meal Organizers and Anganwadi Workers are classified as permanent part-time employees and are not governed by any service rules as per G.O.Ms.No.370, Backward Classes Welfare, Nutritious Meal Programme & Social Welfare Department, dated 16.04.1989. The said Government order clearly stipulates as follows:

> *"The Government have sanctioned the creation of 3360 temporary posts of part-time Nutritious Meal Organisers, cooks and helpers for appointment in school feeding centers thereby extending the scheme to school children in the age group of 10 to 15 from 15th September 1984. Thus, the persons employed under the Nutritious Meal Programme mentioned above are only part-time workers not governed by any service rules."*

ii) He further submitted that G.O.Ms.No.408, Finance (Pension)

Department, dated 25.08.2009 clearly establishes that the service rendered in non-provincialised service, consolidated pay, honorarium and daily wage basis shall be in a job involving whole time (full time) employment. Here the petitioners are appointed as Child Welfare Organizer / Noon Meal Organizer / Anganwadi Worker which is a part-time job and absorbed into the regular post only after 01.04.2003. Hence, the petitioners become ineligible for counting 50% of the service rendered as Child Welfare Organizer / Noon Meal Organizer / Anganwadi Worker along with the regular service.

iii) He further submitted that the Noon Meal Organisers, Cooks and Cook Assistants are not regular employees and they do not come under Tamil Nadu Pension Rules, 1978. The pensioners, who retired on Special Time Scale of Pay, were not getting Dearness Allowance and are not covered under Tamil Nadu Pension Rules. He further submitted that if the Special Pension is revised based on the Fitment Factor 2.57 it will lead to huge additional financial commitment to the State Exchequer.

iv) He also contended that in the present case, the petitioners are permanent part time employees and they do not hold any civil post. Further with regard to calculate half of their temporary service along with regular service towards calculation of pension, he relied on the judgment of the Full Bench of this Court, dated 03.12.2019, in W.A.No.158 of 2016 etc. batch and the relevant portion of the said judgement reads as follows:

> *"45. In the light of the above, we answer the reference as follows:-*
>
> *i) Those who are freshly appointed on or after 01.04.2003 are not entitled to pension in view of W.A.No.158 of 2016 etc., batch proviso to Rule 2 of Tamil Nadu Pension Rules, 1978 inserted by G.O.Ms.No.259 dated 06.08.2003*
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> *(ii) Those government servants/employees appointed prior to 01.04.2003 whether on temporary or permanent basis in terms of Rule 10 (a) (i) of Tamil Nadu State and Subordinate Service Rules will be entitled to get pension as per the Tamil Nadu Pension Rules, 1978.*
>
> *(iii) In case, a government employee/servant had also rendered service in non-provincialised service, or on consolidated pay or on honorarium or daily wage basis and if such services were regularised before 01.04.2003, half of such service rendered shall be counted for the purpose of conferment of pensionary benefits.*
>
> *(iv) Those government servants who were appointed in the aforesaid four categories before the cut off date and later appointed under Rule 10 (a) (i) of Tamil Nadu State and Subordinate Service Rules before 01.04.2003 and absorbed into regular service after 01.04.2003 will not be entitled to count half of W.A.No.158 of 2016 etc., batch their past service*

for the purpose of determination of qualifying service for pension.

(v) Those government servants who were appointed in the aforesaid four categories before 01.04.2003 but were absorbed in regular service after 01.04.2003 will not be entitled to count half of their past service for the purpose of determination of qualifying service for pension."

v) He further submitted that with regard to the contention of the learned counsel for the petitioners that there is no definition of "Pensionable Service" in Tamil Nadu Pension Rules, 1978, the term "non-pensionable establishment" has not been explicitly defined in the Tamil Nadu Pension Rules, 1978. However, rule 2 of the Tamil Nadu Pension Rules, 1978 provides that these rules shall apply to all Government Servants appointed to services and posts in connection with the affairs of the State which are borne on pensionable establishments. Since the petitioners do not fall under Tamil Nadu Pension Rules, 1978, the petitioners claim to revise the pension and family pension on par with the Government servants is not maintainable.

9. <u>Analysis and Findings:</u>

Admittedly, all the petitioners are working as Noon Meal Organisers.

Some of them retired before 01.01.2016 and others retired after 01.01.2016. It is also an admitted fact that selection to the post of Noon Meal Organisers was made by the authorities of the State. The salary was paid to the Noon Meal Organisers out of the funds of the State Government. The powers of appointment, transfer and postings of the Noon Meal Organisers are exercised by the Government authorities. Even though the post of Noon Meal Organiser is not a regular post created under any statute, but that post was created under Government orders. The said post is a permanent post and all the persons appointed as Noon Meal Organisers were given special time scales of pay. The Noon Meal Scheme was started on 01.07.1982 in rural areas and later extended to urban areas of the State of Tamil Nadu. Various orders have been issued in connection with the appointment of Nutritious Meal Organisers, Cooks and Cook Assistants in respect of Puratchi Thalaivar M.G.R. Nutritious Meal Programme.

10. The State Government after making review has issued orders in G.O.Ms.No.163, Social Welfare and Nutritious Meal Programme (NMP.2) Department, dated 18.08.2010, prescribing certain procedures for direct recruitment of Noon Meal Organisers, Cooks and Assistants viz., educational qualification, age and distance criteria. For appointment of Noon Meal Organisers, advertisement regarding vacancies in School Nutritious Meal Centre should be made by the Commissioner of Panchayat Union / Municipal Commissioner / Commissioner of Corporation or by the District Collector prescribing the educational qualification, age, distance criteria and other qualifications to be possessed by the applicants. After receipt of the applications from the eligible candidates, the notifying authorities should verify the same and conduct interviews and send those files to Collector and after getting approval from him, appointment orders will be issued to the selected candidates. Only women should be appointed in Nutritious Meal Scheme for different posts and 25% of approved posts shall be filled by widows / destitutes. With regard to the appointment of Nutritious Meal Organization, the existing rule of reservation should be followed by considering the entire district as one unit for appointment of Cook and Assistant. Before issuing appointment orders, approval of the Personal Assistant to District Collector (NMP) should be obtained. For Chennai Corporation limit, approval should be obtained from Commissioner of Social Welfare. The distance between the applicant's residence and the place of work should be within 3 Kms (Panchayat-

Hamlet-Revenue Village need not be taken into account). The Assistants shall be promoted as Cooks based on their qualifications.

11. The State Government issued orders in G.O.Ms.No.2 Social Welfare and Nutritious Meal Programme Department, dated 03.01.1996 granting time scale to the persons working in Nutritious Meal Programme. Subsequently, the Secretary to Government Social Welfare and Nutritious Meal Programme (NMP-2) Department, addressed a letter dated 12.04.1996 to all the District Collectors (except Madras), wherein it is clarified that the power to appoint or transfer Nutritious Meal Organisers, which was vested with the Government, has been delegated to the District Collector concerned.

12. The State Government, vide G.O.Ms.No.6, Social Welfare and Nutritious Meal Programme Department, dated 22.01.2009, has clarified the eligibility for compassionate appointments for Nutritious Meal and Child Center employees. The State Government, vide G.O.Ms.No.37, Social Welfare and Nutritious Meal Programme (SW 4-2) Department, dated 30.04.2015, provided Hill Allowance and Winter Allowance to Nutritious

Meal Programme Workers working at notified Hill areas. In G.O.(Ms).No.38, Social Welfare and Nutritious Meal Programme (SW 4-2) Department, dated 30.04.2015, the State Government has decided to sanction special increment and biennial increment as stagnation increment to Nutritious Meal Programme Employees, who served in a single post for 10/20/30 years. In G.O.(Ms).No.42, Social Welfare and Nutritious Meal Programme (SW 4-2) Department, dated 30.04.2015, the State Government permitted Nutritious Meal Programme employees to go on Voluntary Retirement with benefits as per the rules. In G.O.(Ms).No.43, Social Welfare and Nutritious Meal Programme (SW 4-2) Department, dated 06.05.2015, the State Government enhanced the paid absence on Maternity Leave from 90 to 180 days to the employees of the Nutritious Meal Programme.

13. On careful perusal of all these Government Orders issued by the State Government, it is clear that the State Government provides Compassionate Appointment, Voluntary Retirement, Maternity Leave, Dearness Allowance, House Rent Allowance, City Compensatory Allowance, Medical Allowance and Annual Increment to the employees working in the Noon Meal Scheme on par with the Government employees, and therefore, the contention of the respondents that the employees working in the Noon Meal Scheme are not regular employees is unsustainable and untenable.

14. In ***G.Periannan vs. The Government of Tamil Nadu*** reported in 2007 (3) CTC 806, a learned Single Judge of this Court held that the Noon Meal Organiser post is a Civil Post and therefore Noon Meal Organiser is entitled for protection under Article 311(2) of the Constitution of India. The relevant paragraphs of the said judgment is extracted hereunder:

> *"13. The Honourable Supreme Court in the decision reported State of U.P. and others v. Chandraka Prakash Pandey and others, 2001 (4) SCC 78, considered similar issue as to the holder of civil post and in paragraph 10 held thus,—*
>
> > *"10. The question as to when a person can be said to be holder of a civil post has been the subject-matter of consideration before this Court on numerous occasions. In the case of State of Assam v. Kanak Chandra Dutta a Constitution Bench of this Court was considering a case where a Mauzadar was appointed for collection of land revenue under the Mauzadari system prevailing in the*

Assam Valley whose primary duty was to collect land revenue and other Government revenues. He was working as Revenue Officer and ex officio Assistant Settlement Officer exercising delegated powers of the Government and the State had the power and right to select and appoint him inasmuch as power to suspend and dismiss. The Mauzadar was drawing not a regular salary but commission by way of a remuneration. The Court observed that there must be existence of relationship of master and servant between the State and its employees and such a relationship can be established by presence of all or some of the ingredients. After due consideration of the entire matter, the Court laid down the law as follows: (AIR pp. 886-87, paras 11-13)

11. Judged in this light, a Mauzadar in the Assam Valley is the holder of a civil post under the State. The State has the power and the right to select and appoint a Mauzadar and the power to suspend and dismiss him. He is a subordinate public servant working under the supervision and control of the Deputy Commissioner. He receives by way of remuneration a commission on his collections and sometimes a salary. There is a relationship of master and servant between the State and him. He holds an office on the revenue side of the *administration to which specific and onerous duties in connection with the affairs of the State are attached, an office which falls vacant on the death or removal of the incumbent and which is filled up by successive appointments. He is a responsible officer exercising delegated powers of Government. Mauzadars in the Assam Valley are appointed Revenue Officers and ex officio Assistant Settlement Officers. Originally, a Mauzadar may have been a revenue farmer and an independent contractor. But having regard to the existing system of his recruitment, employment and functions, he is a servant and a holder of a civil post under the State.*

12. Counsel for the State stressed the fact that normally a Mauzadar does not draw a salary. But a post outside the regularly constituted services need not necessarily carry 'a definite rate of pay'. The post of a Mauzadar carries with it a remuneration by way of a commission on collections of Government dues. Counsel stressed the fact that a Mauzadar is not a wholetime employee. But a post outside the regularly constituted services may be a part-time employment. The conditions of service of a Mauzadar enable him to engage in other activities.

13. In Venkata Swamy v. Supdt. of Post Offices, the Orissa High Court held, on a consideration of the relevant conditions of employment, that a temporary Extra-departmental Branch Postmaster was not a person holding a civil post, but the observation in that case that a part-time employee cannot be the holder of a civil post outside the regularly constituted services is too wide and cannot be supported."

*14**.** Applying the above principles, laid down in the above cited decision and various other judgments relied on in the said judgment, to the facts of this case and having regard to the fact that the petitioner was appointed as Noon-meal Organiser in terms of the Government Order issued and the posting and transfer orders of the posts having been issued by the officials of the State and the salary of the petitioner having been paid from the State funds allocated under the budget allocation, I am of the firm view that the Noon-meal Organiser post is a civil post and therefore Noon-meal Organiser is entitled to have protection under Article 311(2) of the Constitution of India, which clearly states that no person, who is a member of a civil service of the Union or a State or holds a civil post under the Union or a State shall be dismissed or removed or reduced in rank except after an inquiry in which he has been* *informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.*

15. The said view was confirmed by a Division Bench of this Court by its judgment dated 17.07.2014 in W.A.No.938 of 2014 in the ***District Collector, Villupuram District vs. M.Eganathan***.

16. Admittedly, the findings of this Court that Noon Meal Organiser post is a Civil Post of the State Government and the person holding the said post is entitled for protection under Article 311(2) of the Constitution of India has become final. As such, the contention of the respondents that the employees working in the Noon Meal Scheme cannot be treated as regular employees, is untenable since this Court has already held that the said post is a Substantive Post and a Civil Post.

17. With respect to the contention of the respondents that the Noon Meal Organisers, Cooks and Cook Assistants do not come under the Tamil Nadu Pension Rules, 1978, on careful examination of Rule 2 of the Tamil Nadu Pension Rules, 1978, which deals with the applicability of the Pension Rules, the petitioners are not falling under any of the the exceptions provided under Rule 2. Admittedly, pensionable establishment has not been defined under the Tamil Nadu Pension Rules 1978. However, while dealing with a case regarding nature of appointment of Fast Track Court Judges, the Apex Court in ***K.Anbazhagan and another vs. Registrar General, High Court of Madras and another*** reported in (2018) 9 SCC 293 held that the appointment of the appellants therein (Fast Track Court Judges) was in pensionable establishment. The relevant paragraphs of the said judgment are extracted hereunder:

> *"27. The first issue to be answered is as to whether the appointments of Appellants were appointment on 'pensionable establishment' or not. The expression 'pensionable establishment' is not defined under the 1978 Rules. Rule 2 of 1978 Rules which provides for application of Rules is as follows:*
>
> > ***2. Application:*** *Save as otherwise provided in these rules, these Rules shall apply to all Government Servants appointed to Services and posts in connection with the affairs of the State which are borne on pensionable establishments, whether temporary or permanent, but shall not apply to-*
> >
> > *a) Persons in causal and daily rated employment;*
> >
> > *b) Persons paid from contingencies;*

c) Persons employed on contract except when the contract provides otherwise;

d) Members of the All-India Services;

e) Persons who are entitled to the benefits under the Factories Act, 1948 and the Employees Provident Fund Act, 1952 excluding those who are governed by Statutory Services Rules and belong to pensionable service.

28. The expression 'pensionable establishment' has been used in Rule 2. Rule 11 Sub-rule (3) also uses the expression 'non-pensionable establishment'. An indication in chapter 12 of the Rules i.e. Rule 84 is given that service paid for from a Local Fund does not qualify for pension which indicates that services paid for from a Local Fund are services in 'non-pensionable establishment'. For the purposes of this case, we have to only consider as to whether the establishment where Appellants were appointed and working was a 'pensionable establishment' or 'non-pensionable establishment'.

29. We have noticed above the Government Order dated 18.12.2001 by which the State Government created nineteen Fast Track Courts of District Judges (Additional District Judges) in the pay scale of Rs. 15000-18600. The Appellants in their appointment Order dated 14.02.2002 were also referred to as having been appointed as Additional District and Sessions Judges (Fast Track Courts) on ad-hoc basis. The *appointment order further provided that the Appellants as Additional District and Sessions Judges will draw a pay in the scale of Rs. 15000-400-18600 and other usual allowances. The Appellants were appointed in the Judicial establishment of the district and were part of the Subordinate Courts under the control of the High Court. Clause 9 of the Government Order dated 18.12.2001 read as follows:*

> *9. The expenditure involved in the proposal shall be debited to 2014.00 Administration of Justice-800-other Expenditure-II State Plan-JA Eleventh Finance Commission-Upgradation and Special Problem Grant setting up of additional courts for disposal of long pending cases 0.9 Grants in Adl. 03. Other grants for Specific Scheme (D.P.C. No. 2014.00 800 JA 0934).*

30. The payment of salary to the Appellants were made from same sources by which other Additional District Judges and other Judicial Officers of the State were being paid. There is no indication from any of the material produced before us that the Appellants were appointed on any different establishment than the Judicial establishment of the District.

31. We have noticed above that this Court in Brij Mohan Lal v. Union of India and Ors. in paragraph 10 of the judgment has directed that persons appointed under the Scheme (Fast Track Courts Scheme) shall be governed, for the purposes of leave, reimbursement of medical expenses, TA/DA and conduct Rules *and such other service benefits, by the Rules and Regulations which are applicable to the members of the judicial services of the State of equivalent status.*

32. By direction 10(16), this Court had directed the State Governments to ensure compliance, hence, the terms and conditions of service of Appellants were same as those other judicial officers of the State as per Order of this Court. High Court in its judgment although observed that Fast Track Courts cannot be said to have been created in 'pensionable establishment' but said conclusion has been arrived without considering relevant materials and without giving any cogent reasons. We thus are of the view that appointment of Appellants was in 'pensionable establishment'."

18. In the light of the law laid down in the judgment of the Apex Court stated supra, there is no substance in the contention of the respondents that the petitioners do not come under the Tamil Nadu Pension Rules, 1978.

19. To substantiate his contentions, the learned Additional Advocate General for the respondents, has drawn attention of this Court to the judgment of the Apex Court in the ***State of Karnataka and others vs. Ammerbi and others*** in Appeal (civil) 4953-4957 of 1998. The relevant paragraph of the said judgment is extracted hereunder:

> *"Anganwadi workers, however, do not carry on any function of the State. They do not hold post under a statute. Their posts are not created. Recruitment rules ordinarily applicable to the employees of the State are not applicable in their case. The State is not required to comply with the constitutional scheme of equality as adumbrated under Articles 14 and 16 of the Constitution of India. No process of selection for the purpose of their appointment within the constitutional scheme existed. We do not think that the said decision has any application in the instant case."*

But in the present case, the petitioners are appointed in terms of the Government orders in the on going programme implemented by the State Government. From the stage of issuing notification, appointing them under various posts, till retirement, all the procedures were followed by the State Government authorities like regular Government employees and their salary was paid from the State funds allocated under budget allocation. The post of Noon Meal Organiser was created under the Government Orders in exercise of powers conferred under Article 162 of the Constitution of India and as such, the posts under Noon Meal Schemes are held to be substantive posts under the Tamil Nadu Government. In the judgment of ***G.Periannan vs. The Government of Tamil Nadu*** reported in 2007 (3) CTC 806 this Court has already held that posts of Noon Meal Scheme are Civil Posts and they are entitled to take protection under Article 311 (2) of the Constitution of India. In view of the same, this Court is of the opinion that the reliance placed by the learned counsel for the respondents is not applicable to the facts and circumstances of the present case.

20. With respect to payment of Dearness Allowance, the learned counsel for the petitioners submitted that when these employees were in service, they were paid Dearness Allowance as paid to regular time scale post. Since the Government granted Dearness Allowance of pay when they were in service, the non-payment of Dearness Allowance on pension is unjustifiable. The said contention of the petitioners has been admitted in paragraph 7 of the counter affidavit filed by the first respondent, which is extracted hereunder:

> *"7. ...... Further, these employees are being granted the same percentage of dearness allowance revision as sanctioned to*

regular Government employees from time to time along with House Rent Allowance, City Compensatory Allowance, Medical Allowance, other Allowances (Hill Allowance, Winter Allowance etc.) and annual increment as applicable to regular Government employee".

21. The learned counsel for the petitioners has drawn attention of this Court to the judgment of the Apex Court on that aspect in ***the State of Gujarat and others vs. Talsibhai Dhanjibhai Patel*** reported in ***(2022 LiveLaw (SC) 187*** and submitted that the Government cannot take advantage of their own wrong in not paying Dearness Allowance on pension when it was paid throughout their service. The relevant paragraph of the said order is extracted hereunder:

> *"It is unfortunate that the State continued to take the services of the respondent as an ad-hoc for 30 years and thereafter how to contend that as the services rendered by the respondent are ad-hoc, he is not entitled to pension/pensionary benefit. The State cannot be permitted to take the benefit of its own wrong. To take the Service continuously for 30 years and thereafter to contend that an employee who has rendered 30 years continues service shall not be eligible for pension is nothing but unreasonable. As a welfare State, the State as such ought not to have taken such a stand."*

22. In the present case also, the petitioners worked in the Noon Meal Scheme for more than 25 to 30 years. As such, the Government cannot take advantage of their own wrong in not paying Dearness Allowance on pension when it was paid throughout their service and contend that the pension cannot be revised since they are not paid Dearness Allowance on pension.

23. The another contention of the respondents that the revision of pension based on the fitment factor 2.57 will lead to huge financial burden to the State Exchequer is unsustainable, in view of the fact that the petitioners are already receiving pension and now their request is only to revise the existing pension. On this aspect, to substantiate the stand of the petitioners, the learned counsel for the petitioners has drawn attention of this Court to the judgment of the Apex Court in ***All Manipur Pensioners Association vs. State of Manipur and others*** reported in (2020) 14 SCC 625. The relevant paragraph of the said judgment is extracted hereunder:

> *" 8.1 As observed hereinabove, and even it is not in dispute that as such a decision has been taken by the State Government to revise the pension keeping in mind the increase*

in the cost of living. Increase in the cost of living would affect all the pensioners irrespective of whether they have retired pre1996 or post1996. As observed hereinabove, all the pensioners belong to one class. Therefore, by such a classification/cutoff date the equals are treated as unequals and therefore such a classification which has no nexus with the object and purpose of revision of pension is unreasonable, discriminatory and arbitrary and therefore the said classification was rightly set aside by the learned Single Judge of the High Court. At this stage, it is required to be observed that whenever a new benefit is granted and/or new scheme is introduced, it might be possible for the State to provide a cut-off date taking into consideration its financial resources. But the same shall not be applicable with respect to one and single class of persons, the benefit to be given to the one class of persons, who are already otherwise getting the benefits and the question is with respect to revision."

24. In the present case, the grievance of the petitioners is that the respondents are not adopting the same methodology to revise the pension and family pension of the petitioners as adopted for the employees of on time scales of pay and brought all consequential benefits.

25. The Government of Tamil Nadu in G.O.Ms.No.40, Finance (Pay Cell) Department dated 22.02.2017 constituted an Official Committee to examine and make recommendations for revision of scales of pay and allowances for the State Government Employees and Teachers including employees of Local Bodies and also for revision of pension, family pension and retirement benefits. As per the decision of the Government of India, on the recommendations of the 7th Pay Commission, a High Level Committee was constituted and it submitted its report to the Government on 27.09.2017. The Government accepted the recommendations of the Official Committee and issued orders in G.O.Ms.No.303, Finance (Pay Cell) Department, dated 11.10.2017. In the said order, the existing system of pay band and grade pay applicable to the State Government Employees and Teachers including employees of Local Bodies were replaced by a new system of level based pay matrix in a manner similar to that adopted by the Government of India for its employees.

26. In Schedule-I and Schedule-II of the Tamil Nadu Revised Pay Rules, the pay levels for Government employees on time scales of pay and employees on special time scales of pay respectively corresponding to their grade pay under the existing system are indicated. Schedule III and IV of Pay Rules 2017, contain the pay matrix for employees on time scale of pay and employees on special time scales of pay respectively. At paragraph 7 of G.O.Ms.No.303, Finance (Pay Cell) Department, dated 11.10.2017, it was stated that fitment factor of 2.57 shall be applied uniformly to all employees while fixing pay of existing employees in the pay matrix, irrespective of the present grade pay or corresponding new levels. For the purpose of fixing pay in the pay matrix, Pay plus Grade Pay of an employee at any level as on 01.01.2016 shall be multiplied by a factor of 2.57. At paragraph 21 of the said G.O., it is directed that the same methodology that has been adopted in arriving at the pay matrix for the employees on time scales is being adopted for the employees on special time scales of pay. Admittedly, the post of Noon Meal Organisers, Cooks, Cook Helpers are all under Special Time Scales of Pay.

27. At paragraph 22 of the said G.O., it is clarified that the employees on special time scales of Pay shall be granted the same percentage of

Dearness Allowance as applicable to employees on time scales of pay from time to time and these employees also be entitled to House Rent Allowance, City Compensatory Allowance, Medical Allowance and other Allowances along with annual increment as applicable to the employees on time scales of pay from time time. Thus it is clear that the Government has taken a decision to adopt same methodology in arriving at the pay matrix of the employees on special time scales of pay like the employees of time scales of pay by issuing orders under G.O.Ms.No.303, Finance (Pay Cell) Department, dated 11.10.2017.

28. Consequent to G.O.Ms.No.303, dated 11.10.2017 the State Government issued orders in G.O.Ms.No.313, Finance (Pay Cell) Department, dated 25.10.2017 revising pension and family pension and retirement benefits. The said order applies to employees, who retired or died before 01.01.2016. The Government issued another order in G.O.Ms.No.314, Finance (Pay Cell) Department, dated 25.10.2017, revising Special Pension / Special Family Pension / Lump sum grant to the Noon Meal Workers, Anganwadi Workers and and Village Panchayat Secretaries. By the said Government Order, the pension of Noon Meal Organiser was revised from Rs.1,500/- to Rs.2,000/- and for Cooks and Cook Assistants, it was revised from Rs.1,500/- to Rs.2,000/-. The lump sum payment was revised from Rs.60,000/- to Rs.1,00,000/- in the case of Noon Meal Organisers and from Rs.25,000/- to Rs.50,000/- in the case of Cooks and Cook Assistants. The revision of pension/family pension and lumpsum amount take effect from 01.10.2017.

29. On careful examination of G.O.Ms.No.313, Finance (Pay Cell) Department, dated 25.10.2017 and G.O.Ms.No.314, Finance (Pay Cell) Department, dated 25.10.2017, in the light of G.O.Ms.No.303, Finance (Pay Cell) Department, dated 11.10.2017, it appears that while revising the pay for the special time scale posts, the respondents followed the same methodology as followed in the case of regular time scale posts. But the same methodology has not been applied for revision of pension in the special time scale posts on par with the regular time scale posts. The State Government has accepted the recommendations of the Official Committee 2017 and issued G.O.(Ms.)No.303 Finance (Pay Cell) Department dated 11.10.2017, for adopting same methodology in arriving at the pay matrix for the employees on time scales of pay is being adopted for the employees of special time scales of pay. As such, issuing G.O.(Ms.)No.314, Finance (Pay Cell) Department, dated 25.10.2017 without applying the same methodology for revision of pension to the petitioners on par with the employees of time scales of pay, prescribed in G.O.(Ms.)No.313, Finance (Pay Cell) Department, dated 25.10.2017, is discriminatory, unjust, irrational and violative of Article 14 and 16 of the Constitution of India. Accordingly, it is liable to be set aside.

30. For the reasons stated above, these Writ Petitions are allowed and G.O.Ms.No.314, Finance (Pay Cell) Department, dated 25.10.2017 is hereby set aside.

31. Consequently, the respondents are directed to revise the pension and family pension of the petitioners by adopting the same methodology as adopted for the employees on time scales of pay prescribed in G.O.Ms.No.313, Finance (Pay Cell) Department, dated 25.10.2017 and give notional effect from 01.01.2016 or date of entitlement to pension / family pension, which ever is later with monetary benefits from 01.10.2017 and grant all consequential benefits.

There shall be no order as to costs.

Consequently, connected miscellaneous petitions are closed.

04.04.2025

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
pvs/CM

To

1. The Secretary to the Government,
   The Government of Tamilnadu
   Finance (Pay Cell) Department,
   Fort St. George, Chennai 600009.
2. The Collector,
   Chennai, Chennai District.
3. The Commissioner,
   Corporation of Chennai,
   Ripon Building, Chennai 600003.

BATTU DEVANAND.J.,

pvs

Pre-delivery order in
W.P.Nos.16606, 14895, 15221, 17319, 18418, 20086,
<u>20174, 20175 and 22601 of 2018</u>

04.04.2025