

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2025

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THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P. No. 32659 of 2023

K. Muthukrishnan

... Petitioner

Vs.

1.The Secretary to Government,
Revenue Department,
Secretariat, Chennai – 9.

2.The Accountant General/(A&E)
Office of the Principal Accountant General,
Anna Salai, Teynampet,
Chennai – 600 018.

3.The District Collector,
Chengalpattu District.

4.The Revenue Divisional Officer,
Madurantakam,
Chengalpattu District.

5.The Tahsildar,
Cheyyur Taluk,
Cheyyur,
Chengalpattu District.

... Respondents

Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the second respondent in his proceedings letter Pr.A.G. (A&E) / LegalCell / WP32271/2022/2023-24/889/24092, dated 20.09.2023, and quash the same and



W.P. No. 32659 of 2023

consequently direct the fifth respondent to send revised pension proposal to the second respondent taking 50% of temporary period of service (from 31.10.1988 to 31.05.1995) as Village Assistant from 01.06.1995 to 12.10.2015 with the service rendered as Village Administrative Officer from 13.10.2015 to 30.04.2020 as qualifying pensionable period totally 28 years 2 months and further sanction revised pension and monetary benefits thereby with interest in the light of judgment in W.P.(MD) No.17326 of 2020, which was upheld by the Division Bench of this Court in W.A.(MD)No.2165 of 2021 and W.A.(MD)Nos.1254 & 1255 of 2019 dated 28.11.2022.

For Petitioner : Mr. P. Murali

For Respondents : Mrs. S. Anitha,
Special Government Pleader for R1, R3 & R5
Mr. V. Vijaya Shankar,
Standing Counsel for R2

ORDER

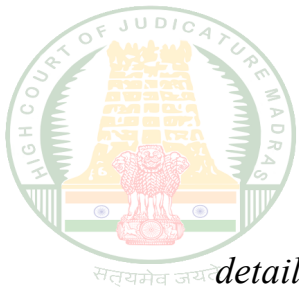
This Writ Petition has been filed against the proceedings issued by the second respondent dated 20.09.2023 wherein, the claim of the petitioner to count half of the service rendered by him as a part-time Village Assistant for the period from 31.10.1988 to 31.05.1995 along with the regular service for the period from 01.06.1995 to 30.04.2020 for the purpose of pensionary benefits, has been rejected saying that the claim is not tenable.



2. Learned counsel for the petitioner would submit that infact, this issue is already decided by this Court on several occasions and in the present case, the fifth respondent sent proposal in favour of the petitioner in the light of the order dated 01.12.2022 in W.P.32271 of 2022. But the proposal sent by the fifth respondent has been rejected by the second respondent with untenable reasons.

3. Learned counsel for the petitioner has drawn the attention of this Court to the order dated 03.03.2025 in W.P.(MD) No. 3723 of 2025. On perusal of the same, it appears that the very same issue has been dealt with by this Court in the said order and by following the earlier order passed by this Court, the said writ petition was allowed directing the respondents therein to count half of the service rendered by the petitioner herein as full time Village Assistant / Kavalari / Thalayari for the period between 08.12.1989 and 01.06.1995 and further directed the respondents to disburse 100% pension for the period from 01.06.1995 to 30.04.2020 with arrears. While passing the said order, this Court also followed the latest judgment of the Full Bench of this Court dated 26.02.2024 in W.P.No.23823 of 2023 [*M.Sivappa Vs. The State of Tamil Nadu and 4 others*].

4. The relevant portion of the order in W.P.(MD) No. 3723 of 2025 are extracted herein under:-



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

25. In the case on hand, the petitioners have claimed 100% of past services up to 31.05.1995. Before moving further, the points so far settled without any confusion can be jotted down below: (i) The inclusion of qualifying service for pension would arise only if the village assistants were made regular on and from 01.06.1995. (ii) Half of the services of the Village Assistants with effect from 01.06.1995 can be counted, if such service is followed by a regular VAO / Office Assistant through promotion prior to 01.04.2003, as per Rule 11(4) of the Tamil Nadu Pension Rules 1978.

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

“22. When a grievance of discrimination is made, the High Court cannot just examine whether someone similarly situated has been granted a relief or benefit and then automatically direct grant of such relief or benefit to the person aggrieved. The High Court has to first examine whether the petitioner who has approached the court has established a right, entitling him to the relief sought on the facts and circumstances of the case. In the context of such



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W.P. No. 32659 of 2020

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 illegally granted relief, is not a ground to direct similar relief to him. That would be enforcing a negative equality by perpetuation of an illegality which is impermissible in law. The principle has been stated by this Court in Chandigarh Admn. v. Jagjit Singh 10 thus:

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



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W.P. No. 32659 of 2020

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 W.P.Nos.18734, 18582, 18738, 18742 of 2020 & WP.Nos.11055, 26256, 11512 of 2021 jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. (emphasis in original)"

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



judgement, it is summarised as under:

18. To summarise, the vexed question of grant of pension for the services rendered by the erstwhile Village Officers has undergone a metamorphosis over the past three decades and step by step the Government have yielded to the demand, category wise as follows:-

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

A special pension of Rs.175/- per month later enhanced to Rs.250/- per month with attendant benefits to all those living ExVillage Officers, who lost their jobs on 14.11.1980 but who never got reemployed was first sanctioned with effect from 5.12.1986. For the families of those who were dead, a special family pension of Rs.100/- per month later enhanced to Rs.150/- per month, was similarly sanctioned.

(b) FOR THOSE WHO GOT RE-EMPLOYED IN 1982:-

For persons who lost their jobs on 14.11.1980 and who were appointed as Village Administrative Officers in the year 1982, by virtue of possessing minimum general educational qualification, but who retired without completing 10 years of service in the new category, their services were directed to be counted not from the date of their appointment in 1982 but directed to be counted with effect from 14.11.1980, so that they get 10 years of qualifying service in the new category to get at least minimum pension.

If these persons did not get 10 years of service, even after counting the service W.P.Nos.18734, 18582, 18738, 18742 of 2020 & WP.Nos.11055, 26256, 11512 of 2021 from 14.11.1980, then they were directed to be granted the special pension as per G.O.Ms.No.828, Revenue, dated 23.8.1996, with effect from 5.12.1986, but excluding the period of their non-employment.

(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 (preregularization 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.

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



WP.Nos.11055, 26256, 11512 of 2021

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.

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

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 parttime 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



WEB COPY



W.P. No. 32659 of 2020

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 W.P.Nos.18734, 18582, 18738, 18742 of 2020 & WP.Nos.11055, 26256, 11512 of 2021 supra) for resolving the issue involved in the said case can be considered as a guiding light to solve the continuing conundrum of the nature of the past services of the village assistants. In this regard it is relevant to extract the relevant paragraphs of the Full Bench Judgment as under:

“35. The other judgment, which is cited in the order of reference as one that would support the view that G.O.Ms.No.74 dated 27.06.2013 is retrospective, of the Division Bench in State of Tamil Nadu. by its Secretary, Public Works Department. and another Vs.S.John Charles and others. The Appeal arose out of a judgment of the learned Single Judge of this Court, which had quashed Clause 6 of G.O.Ms.No.74 dated 27.06.2013, which restricts the operation of G.O.Ms.No.22 dated 28.02.2006 only to full time employees. The power of the Government to change its policy was upheld and in the course of the order, the Division Bench has observed that the Government has not taken away the right to regularize the services subsequently provided those persons had completed 10 years of service as on 28.02.2006. The Division Bench described the action of the Government in passing G.O.Ms.No.74 dated 27.06.2013 as an attempt to W.P.Nos.18734, 18582, 18738, 18742 of 2020 & WP.Nos.11055, 26256, 11512 of 2021 streamline the scheme relating to regularisation. Even the other judgments of this court, which have been referred to by us earlier, reaffirm the view that parity should be maintained, there should be no exploitation by the Government which is a welfare State and temporary or part time employment to permanent posts should be



WEB COPY



W.P. No. 32659 of 2020

stopped.

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

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



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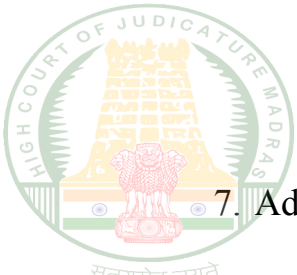
W.P. No. 32659 of 2020

18742 of 2020 & WP.Nos.11055, 26256, 11512 of 2021 the computation of past services for all those village assistants whose services have been regularized as on 01.06.1995 and who continued in the employment as village assistants or promoted as Office Assistants and Village Administrative Officers and retired accordingly.

5. In view of the above, the respondents are directed to count the half of the service rendered by the petitioner as full time Village Assistant / Kavalar / Thalayari for the period between 08.12.1989 and 01.06.1995 and consequently direct the respondents to disburse 100% pension for the period 01.06.1995 to 30.04.2020 with arrears and to send revised pension proposal within a period of four weeks from the date of receipt of copy of this order. It is made clear that the petitioner is not entitled for any other monetary benefit for those period.

5. On the other hand, Mrs. S. Anitha, learned Special Government Pleader based on the averments made in the counter affidavit filed by the fifth respondent would submit that the petitioner's appointment as Village Assistant being a part-time service which has not on a regular time scale pay is not countable for the purpose of pension, as per the judgment of the Division Bench of this Court dated 26.02.2021 in W.A. No. 158 of 2016 and batch.

6. This Court is unable to accept the contentions of the learned Special Government Pleader appearing for the fifth respondent.



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7. Admittedly, the fifth respondent sent proposal to the second respondent to count half of the service rendered by the petitioner as part-time Village Assistant for the period from 31.10.1988 to 31.05.1995 along with the regular service for the purpose of pensionary benefits. The said proposal was rejected by the fifth respondent. Once the fifth respondent sent proposal in favour of the petitioner, he cannot contend now in this writ petition against the claim of the petitioner.

8. In view of the above factual position, by following the earlier orders passed by this Court on this issue has cited supra, this Court is of the considered opinion that the order impugned in this writ petition cannot not sustain and it is liable to be quashed and the petitioner is entitled for the relief sought in this writ petition.

9. Accordingly, this Writ Petition is allowed with the following directions:-

i) the proceedings letter Pr.A.G. (A&E) / LegalCell / WP32271/2022/2023-24/889/24092 dated 20.09.2023 issued by the second respondent is hereby quashed.

ii) The respondents are directed to send revised pension proposal to the second respondent taking 50% of temporary period of service (from 31.10.1988 to 31.05.1995) as Village Assistant from 01.06.1995 to 12.10.2015 with the service rendered as Village Administrative



W.P. No. 32659 of 2020

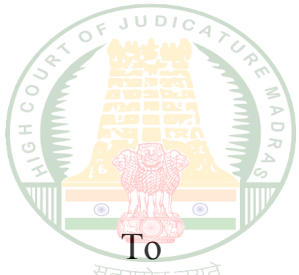
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Officer from 13.10.2015 to 30.04.2020 as qualifying pensionable period totally 28 years 2 months and further sanction revised pension and monetary benefits thereby with interest in the light of judgment in W.P.(MD) No.17326 of 2020, which was upheld by the Division Bench of this Court in W.A.(MD)No.2165 of 2021 and W.A.(MD)Nos.1254 & 1255 of 2019 dated 28.11.2022, within a period of four weeks from the date of receipt of copy of this order. It is made clear that the petitioner is not entitled for any other monetary benefit for those period.

10. With the above direction, the Writ Petition stands allowed. There shall be no order as to costs.

14.07.2025

Index :Yes/No
Neutral Citation :Yes/No
AT



W.P. No. 32659 of 2023

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W.P. No. 32659 of 2023

BATTU DEVANAND, J.

AT

W.P. No. 32659 of 2023

14.07.2025