



W.P.(MD) No.13878 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.09.2025

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD) No.13878 of 2021

S.Sadasivam

... Petitioner

-vs-

1.The Principal Secretary /
State Tax Commissioner
Commercial Tax Department
Ezhilagam, Cheupauk, Chennai-5

2.The Joint Commissioner (ST)
(Intelligence)
Commercial Tax Department
Trichy Division, Trichy

3.The Joint Director
Handloom and Textile Weavers,
Thittasalai, Near Thirumalai School
Venkamedu Post, Karur District

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus calling for the records of the impugned order passed by the 2nd respondent in his proceedings in RC 829/2021 A6 dated



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30.04.2021 and quash the same and consequently directing respondents to grant monthly pension under the old pension scheme.

For Petitioner : Mr.D.Selvanayagam

For Respondents : Mr.R.Suresh Kumar
Additional Government Pleader

ORDER

The issue involved in this writ petition is whether the petitioner is entitled to be included under the Old Pension Scheme and whether the petitioner's service in Chinthlavadi Handloom Weavers Co-operative Society, Kulithalai Taluk, Trichy District, wherefrom he was relieved from service on 26.05.2004, can be treated as a service rendered in (a) non-provincialised service, (b) consolidated pay, (c) honorarium or (d) daily wage basis.

2. The case of the petitioner is that his name is to be included in the Old Pension Scheme, since he was earlier working as a Clerk appointed through employment exchange seniority basis in the office of Chinthlavadi Handloom Weavers Co-operative Society, Kulithalai Taluk, Trichy District, on 13.07.1987 and his services were regularized in the said Society with effect



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from 15.08.1988 and thereafter, he was also promoted to the post of Manager on 26.05.2004. Since the said Society was dissolved due to financial loss, the petitioner was relieved from service on 26.05.2004 after completion of sixteen years of service in the said Society.

3. According to the petitioner, based on his employment exchange seniority, he was called for interview for appointment to the post of Typist and the appointment order was issued on 28.12.2007 by the District Collector, Karur, under Rule 10(a)(i) of Tamil Nadu State and Subordinate Service Rules. The petitioner also claims that he wrote the Special Recruitment Test conducted by the Tamil Nadu Public Service Commission on 11.11.2010 and passed the same and his services were regularized and thereafter, he was promoted to the post of Deputy Tax Officer with effect from 17.10.2017 and he retired from service on 31.07.2022.

4. The petitioner claims that having completed, in all, 28 ½ years of Government service, his name is to be included in the Old Pension Scheme and sanction for monthly pension is to be granted in his favour. He gave a representation on 29.01.2021 for the aforementioned purpose. But, the same



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has been rejected by the second respondent under the impugned order dated 30.04.2021, based on the Full Bench Judgment rendered by this Court in the case of ***Government of Tamil Nadu and others vs. R.Kaliyamoorthy***, rendered in W.A.No.158 of 2016, dated 03.12.2019, and reported in **2019 (6) CTC 705**.

5. A counter affidavit has been filed by the second respondent on behalf of the other respondents denying the contentions of the petitioner. The respondents contend that the petitioner is not eligible to come under the Old Pension Scheme for the following reasons:

- (a) The petitioner was relieved from service from a Society on 26.05.2004, which does not fall under anyone of the categories of (a) non-provincialised service, (b) consolidated pay, (c) honorarium or (d) daily wage basis.
- (b) The petitioner falls under Category (i) and Category (iv) (guidelines) stipulated by the Full Bench of this Court in the case of the ***Government of Tamil Nadu and others vs. R.Kaliyamoorthy***, rendered in W.A.No.158



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of 2016, dated 03.12.2019, and reported in **2019 (6) CTC 705.**

6. Learned counsel for the petitioner, in support of his contention that the petitioner's service in the Society is a non-provincialised service, has relied upon the following authorities:

- (i) A decision rendered by the Honourable Supreme Court in the case of **State of Himachal Pradesh and another vs. Sheela Devi**, reported in **2023 SCC OnLine SC 1272.**
- (ii) A decision of the Honourable Supreme Court in the case of **Vijay Kumar Joshi vs. Akash Tripathi and others**, reported in **2025 SCC OnLine SC 1095.**

7. On the other hand, learned Additional Government Pleader appearing for the respondents would reiterate the contents of the counter filed in this writ petition. He would submit as follows:

- (a) The petitioner is not entitled for inclusion of his name under the Old Pension Scheme, since the service



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rendered by him previously in a Society is not falling under anyone of the categories of (a) non-provincialised service, (b) consolidated pay, (c) honorarium or (d) daily wage basis.

(b) The petitioner was relieved from service from the Society as early as on 26.05.2004 and the subsequent appointment was based on his employment exchange seniority on 04.01.2008 is a fresh appointment as a Typist and it is under Rule 10(a)(i) of Tamil Nadu State and Subordinate Service Rules, whereas, the petitioner's earlier employment in the Society was as per the by-laws of the Society.

(c) The Full Bench decision makes it clear that the petitioner is not eligible to include his name under the Old Pension Scheme.

Therefore, the learned Additional Government Pleader appearing for the respondents would submit that only in accordance with law, the respondents have rightly rejected the petitioner's request for including his name under the Old Pension Scheme.



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8. Admittedly, in the instant case, there has been a gap in service between the date when the petitioner was relieved from service in the Society and the date when the petitioner obtained fresh employment based on his employment exchange seniority. The petitioner was relieved from service from the Society on 26.05.2004, whereas, he obtained fresh employment only on 04.01.2008 based on his employment exchange seniority. A categorical assertion has been made by the respondents that the petitioner's service rendered in the Society does not fall under anyone of the categories as laid down by the Full Bench of this Court in the case of **Government of Tamil Nadu and others vs. R.Kaliyamoorthy**, rendered in W.A.No.158 of 2016, dated 03.12.2019, and reported in **2019 (6) CTC 705**. The Full Bench, as in the operative portion of its Judgment, has issued directions with regard to the applicability of the Old Pension Scheme to the Government servants and the directions are re-produced hereunder:

- “(i) *Those who are freshly appointed on or after 01.04.2003 are not entitled to pension in view of proviso to Rule 2 of Tamil Nadu Pension Rules, 1978 inserted by G.O.Ms.No. 259 dated 06.08.2003.*
- “(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*



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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 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."*

9. Admittedly, in the case on hand, the petitioner's earlier service in the Society was not an appointment made under Rule 10(a)(i) of Tamil Nadu



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State and Subordinate Service Rules. Only the subsequent employment of the petitioner was made under Rule 10(a)(i) of Tamil Nadu State and Subordinate Service Rules. The Full Bench Judgment has made it clear in its direction No. (i) that those, who are freshly appointed on or after 01.04.2003, are not entitled to pension in view of proviso to Rule 2 of Tamil Nadu Pension Rules, 1978 inserted by G.O.Ms.No.259, dated 06.08.2003. Direction No.(iv) also makes it clear that those Government servants, who were appointed under anyone of the four categories, namely, (a) non-provincialised service, (b) consolidated pay, (c) honorarium or (d) daily wage basis, alone are entitled to come under the Old Pension Scheme, if their later appointment was made under Rule 10 (a) (i) of Tamil Nadu State and Subordinate Service Rules, to count half of their past service for the purpose of determination of qualifying service for pension.

10. The decision relied upon by the learned counsel for the petitioner in support of his contention that the petitioner's service in the Society, wherefrom he was relieved from service, is a non-provincialised service, does not have any bearing for the facts and circumstances of the instant case.



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11. In the decisions of the Honourable Supreme Court relied upon by the learned counsel for the petitioner, referred to supra, namely, ***State of Himachal Pradesh and another vs. Sheela Devi***, reported in **2023 SCC OnLine SC 1272** and ***Vijay Kumar Joshi vs. Akash Tripathi and others***, reported in **2025 SCC OnLine SC 1095**, where the Government servants were absorbed in the same service and in the same Department and there was no break of service. But, in the instant case on hand, the petitioner was relieved from service in the Society and after a long break of three years, he has obtained fresh employment based on his employment exchange seniority. A categorical assertion has also been made by the respondents that the petitioner's service in the Society does not fall under anyone of the categories, which makes the petitioner eligible to come under the Old Pension Scheme, namely, (a) non-provincialised service, (b) consolidated pay, (c) honorarium or (d) daily wage basis. The petitioner is also not able to establish that he falls under anyone of these four categories to make him eligible to come under the Old Pension Scheme.



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12. For the foregoing reasons, this Court is of the considered view that the respondents have rightly rejected the petitioner's request for including his name in the Old Pension Scheme under the impugned order dated 30.04.2021, based on the decision rendered by the Full Bench of this Court, referred to supra.

13. In the result, this writ petition is dismissed. However, the dismissal of this writ petition will not prevent the petitioner to apply for any other benefits under the Tamil Nadu Pension Rules, 1978, which the petitioner is legally entitled to. No costs.

03.09.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To:

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State Tax Commissioner,
Commercial Tax Department,
Ezhilagam, Cheupauk,
Chennai-5.



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ABDUL QUDDHOSE, J.

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