BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.08.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MR.JUSTICE K.RAJASEKAR

W.A.(MD)No.557 of 2020
AND
C.M.P.(MD)No.3789 of 2020

1. The State of Tamil Nadu,
   Rep. By the Secretary to Government,
   Commercial Taxes Department,
   Fort St. George, Chennai – 9.

2. The Secretary to Government,
   Department of Tamil Nadu,
   Revenue Department,
   Secretariat, Chennai – 9.

3. The Principal Secretary /
   Commercial Tax Commissioner,
   Commercial Tax Department,
   Chepauk, Chennai – 5.

4. The Joint Commissioner,
   Commercial Tax Department,
   Tirunelveli.

5. The Commercial Tax Officer,
   O/o.the Commercial Tax Office,
   Tirunelveli Bazaar,
   Tirunelveli. ... Appellants / Respondents

Vs.

1. T.Velayutha Perumal(died)

2. V.Suvila Sangeetha, W/o.Godfrey Wilson,
3/480-1, Bethany Mission Home,
Vivekanantha Street, Surveyor Colony,
Madurai – 625 007.

3. V.Asha Jeba Keerthana,
958E/4, 6th Street, TVS Nagar,
Maharaja Ngar Post, Tirunelveli – 627 011.

4. V.Allwyn Immanuel,
958E/4, 6th Street, TVS Nagar,
Maharaja Nagar Post,
Tirunelveli – 627 011.
(R-2 to R-4 suo motu impleaded
vide order dated 21.08.2025. ... Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 16.08.2018 made in W.P.(MD)No.4145 of 2011 on the file of this Court and allow this writ appeal.

For Appellants : Mr.R.Suresh Kumar,
Additional Government Pleader.

For Respondents : Mr.M.R.S.Prabhu,
for Mr.V.K.Vijayaraghavan.

* * *

JUDGMENT

(Order of the Court was delivered by G.R.SWAMINATHAN, J.)

The Government of Tamil Nadu has filed this appeal assailing the order dated 16.08.2018 passed by the learned single Judge allowing W.P.(MD)No.4145 of 2011 filed by one T.Velayutha Perumal (herein after referred to as the writ petitioner). He passed away during the pendency of the writ appeal and the legal heirs have been brought on record.

2.The writ petitioner was appointed as Surveyor-cum-Draughtsman in the Survey Department on contractual basis on 24.08.1984. He was in Survey Department till 16.11.1997. He was transferred and appointed as Typist-cum-Junior Assistant in Commercial Tax Department on time scale of pay on 17.11.1997. He was absorbed in Commercial Tax Department. He was promoted as Assistant on 29.09.2008 and he retired from service on 30.09.2010.

3.The only question that calls for consideration is whether the service put in by him in Survey Department should be taken as a pensionable service. According to the appellants, only 50% of his service can be taken into account for computing his pension. The

Department took 50% of his service rendered in Survey Department and computed his pension accordingly. The writ petitioner was not satisfied with the same and filed W.P.(MD)No.4145 of 2011 demanding that the entire service put in by him should be reckoned for pension purposes. The learned single Judge vide order dated 16.08.2018 allowed the writ petition in the following terms:-

> "4. From the records, it appears that the petitioner joined the service in the year 1983. The above Government Order is also very clear that the services rendered on temporary basis w.e.f. 25.06.1984 has to be regularised. It appears that the petitioner has been appointed on contractual basis and that the respondents drawn attention to Annexure to Rule 11 of Tamil Nadu Pension Rules and that only 50% of the service have to be taken into account for pensionary benefits. This Court by order dated 03.09.2012 reported in (2013) 2 MLJ 399 (V.Ganapathy, No.584, (Old No.18F/82, Kanyakumari District V. State of Tamil Nadu, rep. By its Principal Secretary to Government, Revenue Department, Chennai and others) held that Rule 11 allowing only 50% of service rendered on temporary basis for grant of pensionary benefit is hit by Article 14 of the Constitution of India. In this case, though the word contractual is mentioned, the entire service have been rendered by the petitioner to the

respondents on temporary basis and the Court has got to see whether his service falls under the category contract for service or contract of service. The petitioner was employed by way of different nomenclature and the petitioner has been employed from 1983. As per rule 11 of the Tamil Nadu Pension Rules depriving 50% of service is held to be bad in terms G.O.Ms.No.996, dated 22.09.1984, Services rendered by the petitioner from 25.06.1984 has to be taken into account only for the purpose of pensionary benefits and not for any other benefits including the terminal benefits. Hence, I find much force in the contention of the writ petitioner.

5. Even though the petitioner was regularised in terms of the Government Order regularizing the Government Service from 25.06.1984, it is applicable to the employees like that of the petitioner, who is said to be on contract basis, admittedly who are working on contract of service and not on contract for service."

Aggrieved by the same, this writ appeal has been filed.

4.The learned counsel appearing for the writ petitioner relied on the decision rendered in ***(2013) 2 MLJ 399 (V.Ganapthy V.State of Tamil Nadu)***. In the said writ petition, Rule 11 of the Tamil nadu Pension Rules 1978 as well as G.O.Ms.No.996 Personnel and

Administrative Reforms (Placements) Department dated 22.09.1984 which provides for taking into account 50% of one's service put in as temporary basis was struck down as violative of Article 14 of the Constitution of India. This decision was relied on by the learned single Judge while allowing the present writ petition.

5. We are respectfully of the view that the decision rendered in ***(2013) 2 MLJ 399 (V.Ganapthy V.State of Tamil Nadu)*** is not correct. This is for more than one reason. In the said writ petition, there was no challenge whatsoever to the validity of Rule 11 of the Tamil Nadu Pension Rules 1978. Even G.O.Ms.No.996 dated 22.09.1984 was also not impugned. The learned single Judge on his own had quashed the Pension Rules as well as G.O.Ms.No.996 dated 22.09.1984. This in our view was not warranted.

6.When there was no challenge to a statutory rule, it could not have been struck down on a suo motu basis by the Court (vide ***Secretary to Government vs. M.Senthil Kumar (2005) 3 SCC 451***). It is also to be noted that as per the roster, any challenge to the statutory rule can be entertained only by the Division Bench and not by a single Judge. Secondly, the issue on hand is squarely covered by the Full Bench decision reported in ***(2019) Vol.VI. CTC 705 (Government of Tamil Nadu and Others V. R.Kaliyamoorthy)***. Paragraph No.45 Clause 3 reads as follows:-

> "(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."

7.In this view of the matter, the order of the learned single Judge is set aside. This writ appeal stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.SWAMINATHAN, J.) & (K.RAJASEKAR, J.)
21st August 2025

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
PMU/skm

G.R.SWAMINATHAN,J.

AND

K.RAJASEKAR, J.

PMU/skm

W.A.(MD)No.557 of 2020

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