

W.A.(MD)No.940 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.04.2025

CORAM:

**THE HONOURABLE MRS.JUSTICE J. NISHA BANU
and
THE HONOURABLE MRS.JUSTICE S.SRIMATHY**

**W.A(MD)No.940 of 2025
and
C.M.P.(MD)No.6031 of 2025**

1.The State of Tamil Nadu,
Represented by its Secretary,
Revenue Department,
St. George Fort,
Chennai-600 009.

2.The District Collector,
Madurai District,
Madurai 20.

3.The Tahsildar,
Madurai North Taluk,
North Taluk Office,
Madurai District.

... Appellants

Vs.

A.Malaichamy

... Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent against the order of this Court in W.P.(MD)No.15270 of 2017, dated 20.03.2019.

For Appellants	:M/s.D.Farjana Ghoushia Special Government Pleader
For Respondent	:Mr.S.Srikanth



W.A. (MD) No. 940 of 2025

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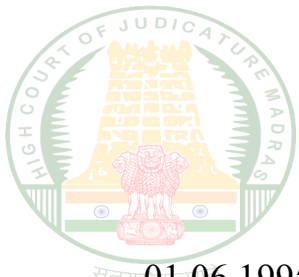
JUDGMENT

(Judgment of the Court was delivered by **S.SRIMATHY, J.**)

The present writ appeal is filed by the State against the order, dated 20.03.2019, passed in W.P.(MD)No.15270 of 2017.

2. The writ petition was filed for issuance of a Writ of Certiorarified Mandamus to quash the order dated 09.06.2017 and consequently to direct the respondents to refix the pension by considering the petitioner's entire period of service from 10.06.1987 to 30.06.2012 based on various judgments and further, to direct the respondents to sanction full pensionary benefits.

3. The writ petitioner joined the duty on 10.06.1987 at Ponnari Village and worked as Grama Paniyalar. Thereafter, he worked at Kodimangalam Village, Kulapandi Firka till the date of retirement and retired on 30.06.2012 on attaining superannuation, thereby, he has put in service of 25 years and 20 days. The petitioner's service was regularized with effect from 01.06.1995 based on G.O.Ms.No.625, Revenue Department, dated 06.07.1995. The 3rd respondent Tahsildar sent pension proposal, which was sanctioned for the period from



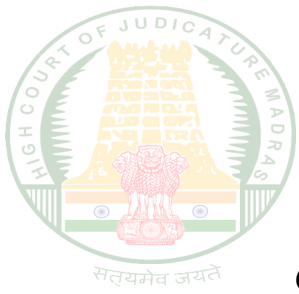
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सत्यम् 01.06.1995 to 30.06.2012.

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4. The contention of the petitioner is that the appellants have taken the petitioner's appointment as part time by referring to G.O.Ms.No.625, but the said G.O., is not applicable to the petitioner, which is held by the Division Bench in W.A.(MD)No.16 of 2009 and the same was confirmed by the Hon'ble Supreme Court while dismissing the S.L.P.No.21683 of 2009. Based on the same, the appellants had disbursed the entire pension to employee Mr.Raman Nair, who filed W.P.(MD)No.1716 of 2005 and W.A.(MD)No.16 of 2009 through G.O.Ms.No.33, Revenue Department, dated 25.01.2012, thereby the order passed by the Court is complied with. Since the petitioner is also similarly placed, petitioner had filed the writ petition by relying on the said order.

5. The appellants had submitted that the petitioner's initial appointment from 1987 is a part time service. Thereafter, the said post was abolished and a full-time post was created. In the full time post the petitioner was post in the year 1995, hence the petitioner is not entitled to calculate the part time service for the pensionary benefits.



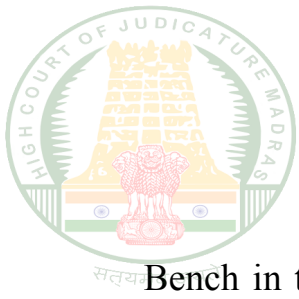
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6. After hearing the rival submissions, the Writ Court by following the judgment passed in W.P.(MD)No.12776 of 2012 in the case of **C.Chellam Vs. The Principal Accountant General (A & E)**, dated 25.03.2014, allowed the writ petition by quashing the order which had declined to grant full pension and consequently, directed to pay the entire pension by considering the entire service. Aggrieved over the same, the present writ appeal is preferred by the State.

7. The contention of the appellants is that the said judgment rendered in **C.Chellam** is not applicable to the writ petitioner, since the writ petitioner was appointed as a part time “Talaiyari” with effect from 10.06.1987, vide orders of the Tahsildar, Madurai North in proceedings in Pro.Rc.No.6123/87-B1, dated 26.05.1987 and he has joined as Talaiyari from forenoon on 10.06.1987. Further, the post of Talaiyari was erstwhile Karnam and Headman. Though prestigious, it was considered as part time job and mostly devolved hereditarily by way of succession and it was not a pensionable service until the year 1995 when their services were regularised retrospectively as on 01.06.1995, vide G.O.Ms.No.625, Revenue Department, dated 06.07.1995. Even as per the service rules, it is only a part time job.

8. The said issue was subsequently considered by another Division



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Bench in the case of ***the State of Tamilnadu Vs. E.Balachandran*** filed in ***W.A. (MD)No.1629 of 2018 and batch*** wherein the appeal preferred by the State was allowed and it was held that as per the Tamil Nadu Village Servants Conduct Rules, 1983 the post of Village Assistants is only part time service, therefore the said part time service cannot be included along with pensionable service. The relevant portion of the judgment is extracted hereunder:

*“23.Learned counsel appearing for the respondents/writ petitioners made reliance upon the decision rendered in Writ Appeal (MD) Nos. 1254 and 1255 of 2019 dated 19.11.2019 in the matter of the State of Tamil Nadu, rep. by its Secretary, Department of Revenue v. Chinna Karuppaiah. We are afraid that the said decision will not enable the respondents from getting the relief. As aforesaid, the relevant Rules were not brought to the notice of the Court and Rule 16 of the Tamil Nadu Village Servants Service Rules, 1980, speaks about the status of the erstwhile Village Assistants and Village Officers such as Talaiyari and Karnams. Insofar as Talaiyaris are concerned, the part-time posts were sought to be abolished by fixing fixed compensation for the said work done and thereafter, a concession was given by bringing them under regular time scale of pay. The Government Orders concerned, which we discussed, followed by the Rules framed for the aforesaid purpose was not brought to the notice of the Court. **We may note at the cost of repetition, but for the Government Order passed on 06.07.1995, the respondents Talaiyaris would have continued to have the status of part-time employees only. Therefore, it is not open to them to consider even from the inception that they were full-time employees, when there***



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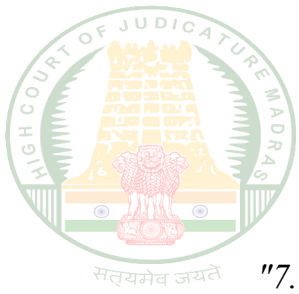
was no regular full-time scale of pay on a cadre basis.

24. The reliance made on the Tamil Nadu Village Servants Service Rules also is not correct, since it is to be applied prospectively for the new appointments. ***Therefore, there is no question of deemed permanent status contrary to the Rules and in any case, the respondents cannot approbate and reprobate.***

25. Insofar as the Village Officers (Karnams) are concerned, the Act itself clearly specifies that they were part-time Village Officers and therefore, they were abolished. That is the reason why a challenge was made before the Courts. Thus, there is no ambiguity with respect to their own status. Secondly, re-employment has been made in favour of few eligible persons after due scrutiny by the Committee. A learned Single Judge (The Hon'ble Mr. Justice V.Ramasubramanian), as he then was, by order dated 09.01.2009, made in W.P.Nos.276 to 280 of 2009 and W.P.Nos.287 to 293 of 2009, in the matter of [M. Annai Muthu v. State of Tamil Nadu and others](#), has clearly captured the history, background and their entitlement. Even for them, a separate Government Order has been passed in G.O.Ms.No.121, Revenue Department, dated 13.03.2001, giving certain pensionary benefits. In this connection, we would appropriately quote the following paragraphs:-

However, by an order in G.O.Ms.No.121, Revenue, dated 13.3.2001, the Ex. Village Officers who lost their jobs on 14.11.1980 and who got appointed temporarily after 1988 by acquiring the minimum general educational qualification subsequent to the date of abolition, but who retired without completing the qualifying service of 10 years, were granted the benefit of special pension originally ordered to the Ex-Officers who lost their jobs and who never got re-employment.

Paragraphs-7 and 8 of the said order read as follows:-



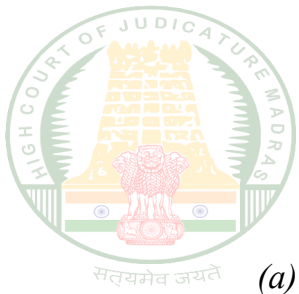
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"7. The Government have after careful consideration of the request of the Retired Village Administrative Officers and the recommendation of the Principal Commissioner and Commissioner of Revenue Administration, direct that the pensionary benefits ordered in G.O.(Ms) No.828, Revenue, dated 23.8.1996 and enhanced in G.O.(Ms) No.629, Revenue, dated 22.7.1998 be extended to the Ex-Village Officers who lost their jobs on 14.11.1980 and who did not possess minimum general educational qualification at the time of abolition of the posts of Village Officers (i.e.) 14.11.1980, but obtained the educational qualification, subsequent to 20.2.1982 and appointed as Village Administrative Officers under Rule 10(a)(i) basis with reference to G.O.(Ms) No.1287, Revenue, dated 6.7.1988 and retired without completing 10 years of qualifying service.

8. The Government also direct that the said category of Ex-Village Officers are eligible for pension sanctioned in paragraph-3 above, with effect from 5.12.1986, excluding for the period they worked as Village Administrative Officers."

9. The said decision was also followed by Learned Single Judge in the case of **S.Muthusamy Vs. Joint Secretary to the Government, Revenue and Disaster Manager Department, Chennai** reported in **2024-2-Writ L.R. 357** and has elaborately dealt with the issue and the same is extracted hereunder:

"10. For considering the prayer of the writ petitioner, the following Service Rules and Government Orders have to be taken into consideration



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(a) *Tamil Nadu Village Servants' Service Rules, 1980.*

(b) *Tamil Nadu Village Servants Conduct Rules 1983.*

(c) *G.O.Ms.No.625, Revenue Department, dated 06.07.1995.*

(d) *Tamil Nadu Village Assistants' Pension Rules, 1995.*

(e) *Tamil Nadu Pension Rules, 1978.*

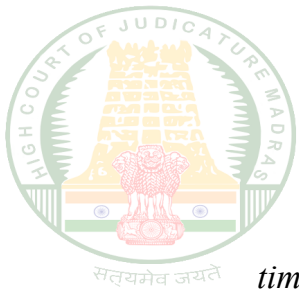
11. *From the appointment order issued to the writ petitioner on 31.03.1984, it is clear that the petitioner has been appointed, invoking Rule 4 of Tamil Nadu Village Servants Service Rules, 1980. A perusal of Rule 16 of the said Rules reveals that the provisions of Fundamental Rules and the Tamil Nadu Leave Rules, 1978 are not applicable to the village servants. It has been further clarified that the post of Village Servants are non-pensionable.*

12. *A perusal of the Village Servants Conduct Rules, 1983 reveals that it is applicable to all Village Servants who were appointed under Tamil Nadu Village Servants Service Rules 1980*

13. *Rule 3 of the Village Servants Conduct Rules, 1983 is extracted as follows:*

“3.Private trade or employment: The Village Servants being part-time Government Servants, may take up part-time work or occupation; Provided that (1)such part time work or occupation shall not interfere with their legitimate duties as village servants; and (2)the previous permission, in writing, has been applied for and obtained from the Revenue Divisional Officer concerned if the work or occupation is confined to the charge village and from the District Collector concerned, if the work or occupation extends beyond the charge village.”

14. *A careful perusal of Rule 3 of the Tamil Nadu Village Servants Conduct Rules, 1983 reveals that the Village Servants are part*



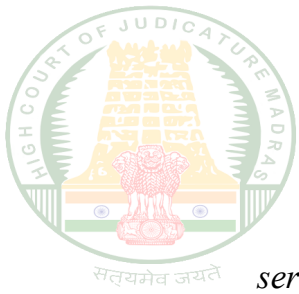
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time Government Servants and they are entitled to take up any other part time work or occupation subject to the condition that the said private trade or employment shall not interfere with their legitimate duties as village servants. Apart from that, a Village Servant has to obtain previous permission, in writing, if he likes to engage himself in a private trade or employment.

15.It is not in dispute that the services of the petitioner were regularized under G.O.Ms.No.625 Revenue Department, dated 06.07.1995. A perusal of Government Order reveals that the Government had received several representations from the part time Village Servants to regularise them as full time Government Employees. Acceding to their request, the above said Government Order has been issued converting the part time Village Assistants as full time Government Servants in the time scale of pay of Rs.600-10-750. The said Government Order came into force from 01.06.1995. Thus the petitioner's services were regularised as full time employees in the regular time scale of pay only from 01.06.1995 onwards.

16.The Government of Tamil Nadu had framed Special Pension Rules for Tamil Nadu Village Assistants and the same is published in the Government Gazette on 27.03.2019, in exercise of the power conferred under the proviso of Article 309 of the Constitution of India. A perusal of the said Pension Rules reveals that the Rules are called as Tamil Nadu Village Assistants Pension Rules, 1995 and the same is applicable to full time Village Assistants employed in the Revenue Department.

17.A perusal of Rule 4 reveals that in computing the length of service for calculation of pension and gratuity, temporary, officiating and permanent (full time) service shall be reckoned as qualifying



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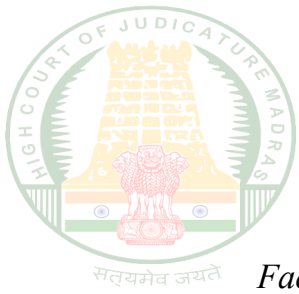
service. A perusal of Rule 7 discloses that the Village Assistant shall be eligible for pension, if he has rendered total qualifying service of 10 years or more and discharged or retired as per Rules and orders. Rule 9 deals with payment of family pension. Therefore, it is clear that the Village Assistant in the Revenue Department in the State of Tamil Nadu are governed by Special Pension Rules namely Tamil Nadu Village Assistants Pension Rules.

18.Rule 2 of the Tamil Nadu Pension Rules, 1978 is extracted 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 casual 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 entitled to the benefit of a Contributory Provident Fund;*
- (f)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 Service Rules and belong to pensionable service.”*

19.A perusal of Rule 2 of the Tamil Nadu Pension Rules reveals that the said Rule is not applicable to certain category of the employees. Rule (f) reveals that the Tamil Nadu Pension Rules, 1978 is not applicable to the persons who are entitled to the benefits under the



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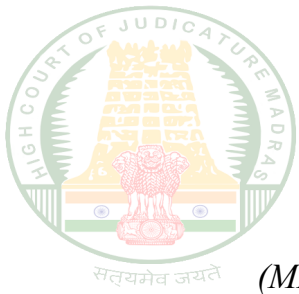
Factories Act, 1948 and the Employees' Provident Fund Act, 1952, excluding those who are governed by Statutory Service Rules and belong to pensionable service. Therefore, it is clear that whenever an employee is governed by a Special Pension Rule, he is excluded from the purview of Tamil Nadu Pension Rules, 1978.

20. In the present case, the Village Assistants in the State of Tamil Nadu are governed by a Special Pension Rule namely Tamil Nadu Village Assistants' Pension Rules, 1995. In such circumstances, the question of invoking any one of the provisions of Tamil Nadu Pension Rules 1978 much less, Rule 11(4) of the said Rules does not arise.

21. The Hon'ble Division Bench of our High Court in a judgment reported in (2021) 3 MLJ 92 (State of Tamil Nadu, rep. by its Principal Secretary to Government, Revenue Department, Secretariat, Chennai and others Vs. E. Balachandran), after considering all the previous Division Bench Judgments, had arrived at a finding that those judgements have been rendered without taking note of the relevant provisions and they may not be a binding precedent. Paragraph Nos. 22 and 23 are extracted as follows:

"22. Therefore, in view of the law laid down as aforesaid, we have no hesitation in holding that the appeals filed by the State are liable to be allowed. There is one more difficulty we may face. This is, with respect to catena of decisions available without taking note of the relevant provisions. Even this issue has been answered by the Full Bench of this Court referred to above, by holding that an issue which is not considered consciously leading to a decision may not be a binding precedent. Thus, illegality cannot be allowed to perpetuate.

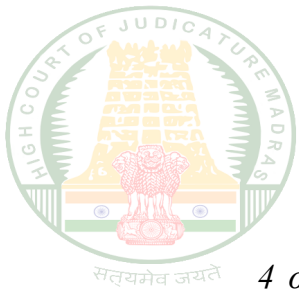
23. Learned counsel appearing for the respondents/writ petitioners made reliance upon the decision rendered in Writ Appeal



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(MD) Nos.1254 and 1255 of 2019 dated 19.11.2019 in the matter of the State of Tamil Nadu, rep. by its Secretary, Department of Revenue v. Chinna Karuppaiah. We are afraid that the said decision will not enable the respondents from getting the relief. As aforesaid, the relevant Rules were not brought to the notice of the Court and Rule 16 of the Tamil Nadu Village Servants Service Rules, 1980, speaks about the status of the erstwhile Village Assistants and Village Officers such as Talaiyari and Karnams. Insofar as Talaiyaris are concerned, the part-time posts were sought to be abolished by fixing fixed compensation for the said work done and thereafter, a concession was given by bringing them under regular time scale of pay. The Government Orders concerned, which we discussed, followed by the Rules framed for the aforesaid purpose was not brought to the notice of the Court. We may note at the cost of repetition, but for the Government Order passed on 06.07.1995, the respondents Talaiyaris would have continued to have the status of part-time employees only. Therefore, it is not open to them to consider even from the inception that they were full-time employees, when there was no regular full-time scale of pay on a cadre basis.”

22.In view of the above said Service Rules and the judgement of the Hon'ble Division Bench reported in (2021) 3 MLJ 92 (State of Tamil Nadu, rep.by its Principal Secretary to Government, Revenue Department, Secretariat, Chennai and others Vs. E.Balachandran), which is confirmed by the Hon'ble Supreme Court in Special Leave Petition (Civil) Diary No. 15406 of 2021 dated 12.08.2022, it is clear that the petitioner's Services between 31.03.1984 and 01.06.1995 are part time services and therefore, they cannot be taken into consideration for the purposes of calculating the pensionable services in view of Rule



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4 of Tamil Nadu Village Assistants' Pension Rules. Any reliance upon Rule 11(4) of Tamil Nadu Pension Rules 1978, is of no help to the writ petitioner, in view of the fact that the said Pension Rules is not applicable to the writ petitioner.”

10. The aforesaid judgments are followed by the subsequent Division Bench in W.A.(MD)No.976 of 2021 and batch in the case on ***Principal Secretary to Government Vs. I.S.Muthiah***, vide judgment, dated 19.03.2025.

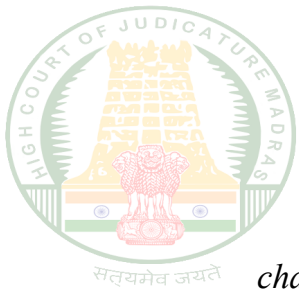
11. Therefore, the position is clear that until the post of Village Assistant is abolished, the post is held as a part time job. Even as per the service rules, the post is considered as a part time and the persons were permitted to do any other part time work or occupation. The relevant portion of the rule is extracted hereunder:

*3. Private trade or employment. - The Village Servants being part-time Government servants, **may take up part-time work or occupation:***

Provided that -

(1) such part-time work or occupation shall not interfere with their legitimate duties as village servants; and

(2) the previous permission, in writing, has been applied for and obtained from the Revenue Divisional Officer concerned if the work or occupation is confined to the charge village and from the District Collector concerned, if the work or occupation extends beyond the



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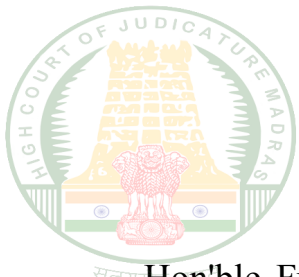
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charge village.”

Therefore, this Court is of the considered opinion that the part time service cannot be counted along with full time service to calculate pensionable service.

12. The learned Counsel appearing for the writ petitioner submitted that in an earlier Division Bench judgment, it was held even though it was a part time service, they were doing a full-time job, therefore, they are entitled to pension. The said contention was considered in E.Balachandran's case and the Division Bench held that there cannot be deemed full time service contrary to the Rules, therefore the said contention of deemed full time cannot be accepted. When the service rules itself has considered the said job as a part time service, any order beyond the statute cannot be granted.

13. The next contention of the writ petitioners is that when some of the Village Assistants were granted pension by calculating the part time service and if the same is denied to the writ petitioners the same is against Article 14. The said contention cannot be accepted since it is settled law that Article 14 cannot be invoked by citing wrong order. Further Article 14 cannot be invoked de hors of statute, in the present case the statute is clear that the service is part-time only. The



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Hon'ble Full Bench of Madras High Court in the case of ***State Vs. S.Rajaram*** reported in **2021 (1) CWC 705** has held as under:

“19. It is well settled that Article 14 of the Constitution of India cannot be invoked for perpetuating illegality. A wrong order passed in one case cannot be made the basis for compelling a Public Authority to pass similar order in any other case. Even if the State implements an erroneous order passed by the Court, it cannot be precluded from challenging a similar order passed in another case, simply because Appeal was not preferred in the earlier case (Paragraph No.17 in State of Madhya Pradesh Vs. Ramesh Chandra Bajpai 2009 (13) SCC 635)”

Therefore, a wrong order cannot be followed and hence, the contention of the writ petitioner is rejected.

14. Even as per Rule 11(4) of the Tamil Nadu Pension Rules, 50% of past service can be taken from the services rendered as non-provincialized service, consolidated pay, honorarium or daily wages provided the same should be whole time employment. However, the said rule is not applicable to the part time service at all.

15. Therefore, for the reasons stated supra, the writ petitioner's service rendered as part time in the post of Village Assistant cannot be taken to calculate



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pensionable service. Therefore, the order passed by the Writ Court is set aside and the writ appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

[J.N.B., J.] [S.S.Y., J.]
09.04.2025

Index : Yes / No

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To:

- 1.The Secretary,
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- 2.The District Collector,
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- 3.The Tahsildar,
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