



W.P. No.17628/2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
26.03.2026	06.04.2026

CORAM

**THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN
THE HONOURABLE MR. JUSTICE M.DHANDAPANI
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

W.P. NO.17628 OF 2018

A.Elangovan

.. Petitioner

- Vs -

1. State of Tamil Nadu
Rep. By its Principal Secretary
Department of Revenue
Secretariat, St. George Fort
Chennai 600 009.
2. The Commissioner
Revenue Administration
Ezhilagam, Chempauk
Chennai 600 005.
3. The District Collector
Office of District Collector
Tiruppur, Tiruppur District.
4. The Tahsildar
Dharapuram Taluk
Tiruppur District.

.. Respondents



W.P. No.17628/2018

WEB COPY

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of mandamus directing the respondents to grant pension to the petitioner by calculating petitioner's entire service from the date of joining the service as part time Village Assistant, i.e., from 01.01.1980 onwards instead of date of regularization on 01.06.1995 upto petitioner's retirement on 30.06.2016 with arrears by considering the petitioner's representation dated 28.02.2018.

For Petitioner : Mr. N.Ponraj

For Respondents : Mr. P.S.Raman, AG
Assisted by
Mr. T.Chandrasekaran, Spl.G.P.

ORDER

M.DHANDAPANI, J.

The failure to count 50% of the service rendered by the petitioner as Part-Time Village Assistant for the purpose of pensionary benefits prior to the change of status of the petitioner as full-time Government Servant upon issuance of G.O. (Ms) No.625, Revenue Department, dated 06.07.1995 by regularising the service of Village Assistants from 01.06.1995 is put in issue through the present writ petition.



W.P. No.17628/2018

WEB COPY

2. Before detailing the reasons which prevailed upon the learned single Judge to refer the matter to a Larger Bench, the point of reference, as has been formulated and placed before this Court for an authoritative answer, is as under:-

“Whether the 50% service rendered by the petitioner as part time Village Assistant has to be taken into account along with the regular service period to determine the pensionary benefits or not, as per the judgment dated 08.01.2010 of the Apex Court in SLP (CC) No.21683/2009.”

3. The scenario in which this reference has come to be placed before this Court needs to be briefly set out so as to have a better appreciation of the issue, based upon which this Court can deliberate and render opinion on the point of reference.

4. The writ petition was filed by the petitioner for seeking the indulgence of this Court to direct the respondents to pass orders on the representation of the petitioner for counting the service rendered by the petitioner as Village



W.P. No.17628/2018

WEB COPY

Assistant prior to regularisation of the services of the petitioner in the post of Village Assistant on 1.6.1995.

5. When the matter was placed for hearing before the learned single Judge (Battu Devanand, J.), the learned counsel for the petitioner and the respondents placed countering decisions with regard to the entitlement of Village Assistants to have the period prior to 1.6.1995 to be counted for the purpose of pensionary benefits. The submissions advanced by the learned counsel on either side has been captured as under by the learned single Judge :-

"2. Learned counsel for the petitioner has drawn the attention of this Court to the G.O.(Ms) No.33, Revenue [Ser-8(1)] Department dated 25.01.2010 and would submit that, in the light of the judgment dated 08.01.2010 rendered by the Apex Court in S.L.P.(CC) No.21683 of 2009, which was filed against the judgment dated 16.02.2009 in W.A.(MD)No. 16 of 2009, a Division Bench of Madurai Bench of Madras High Court in an identical matter, issued the said G.O.. to grant pension to the petitioner therein, taking into account of his entire period of service from 21.07.1995 and the petitioner also seeking the same relief in the present writ petition.

2.1. Learned counsel for the petitioner also relied on the judgment dated 22.10.2019 in W.A.(MD) No.370 of 2019 rendered by a Division Bench of Madurai Bench of Madras High Court wherein, it is directed to pass orders counting 50%



WEB COPY



W.P. No.17628/2018

of the services of the appellant put in by him as Thalayari for the period from 07.01.1983 to 31.05.1995 for the purpose of calculation of pension along with regular services put in by him as Village Assistant.

3. On the other hand, the learned Additional Government Pleader appearing for the respondents has placed reliance on the judgment in W.A.(MD) No. 1629 of 2018 and batch.

dated 26.02.2021 passed by a Division Bench of Madurai Bench of Madras High Court and judgment in W.A.(MD) No.1631 of 2021 and batch dated 30.11.2023, would submit that the petitioner is not entitled for the relief sought in the present writ petition for taking into account of his entire period of service to grant pensionary benefits.

4. I have gone through the two Division Bench judgments relied on by the learned Additional Government Pleader. But I could not find there is any consideration of the judgment of the Apex Court in S.L.P. No.21683 of 2009 dated 08.01.2010 which was passed in favour of the petitioner in an identical matter, by the two Division Benches.

5. Under these circumstances, I am of the opinion that in view of the conflicting findings of various Division Benches, it is appropriate to place this matter before the Hon'ble The Chief Justice to take decision to refer this issue before Larger Bench to examine whether, the 50% service rendered by the petitioner as part time Village Assistant has to be taken into account along with the regular service period to determine the pensionary benefits or not, as per the judgment dated 08.01.2010 of the Apex Court in S.L.P.(CC) No. 21683 of 2009."



W.P. No.17628/2018

WEB COPY

6. From the above order, it is evidenced that the learned single Judge, while found that there are conflicting decisions of various Division Benches, further found that the decision of the Apex Court in SLP (CC) No.21683/2009 has not been taken into consideration, which prevailed upon the learned single Judge to place the matter before the Hon'ble Chief Justice for being placed before a Larger Bench.

7. Before endeavouring to answer the reference, the conflicting decisions, which have been pressed into service for and against the relief sought for are tabulated hereunder and the substantive portion, which are relied on requires to be discussed. The decisions relied on by the respective parties are as under:-

<i>Decisions relied on by the Petitioner</i>	<i>Decisions relied on by the Respondents</i>
<i>The District Collector, Kanyakumari District & Anr. – Vs – K.Raman Nair (W.A. (MD) No.16/2009 – Dated 16.02.2009)</i>	<i>Govt. Of Tamil Nadu & Ors. – Vs – R.Kaliyamoorthy (2019 (6) CTC 705)</i>
<i>K.Velmayil – Vs- The Secretary to Government & Ors. (W.A. (MD) No.370/2019 – Dated 22.10.2019)</i>	<i>State of Tamil Nadu & Ors. – Vs – E.Balachandran & Ors. (W.A. (MD) Nos.1629/2018, etc. Batch – Dated 26.02.2021)</i>
<i>State of Tamil Nadu & Ors. – Vs – Chinna Karuppaiah & Ors. (W.A. (MD) Nos.1254 & 1255/2019 – Dated</i>	<i>The Principal Secretary to Government, Revenue Department, Chennai & Ors. – Vs – M.Krishnan & Ors. (W.A. (MD)</i>



W.P. No.17628/2018

19.11.2019)	Nos.1631/2021, etc. Batch – Dated 30.11.2023)
-------------	---

8. The case of *Raman Nair (supra)*, has been relied on, on behalf of the petitioner for seeking the relief for counting the service rendered prior to the date of regularisation of the petitioner in the post of Village Assistant.

9. In *Raman Nair case* while the learned single Judge allowed the prayer for counting the period of service rendered by the petitioner therein by placing reliance on Rule 11 of the Tamil Nadu Pension Rules, the said decision, tested before the Division Bench, resulted in dismissal of the appeal on the below mentioned reasoning :-

"6. It is not in dispute that the writ petitioner was appointed on 21st July, 1975. The said appointment was made on temporary basis, in a scale of pay, as evident from letter of appointment a quoted hereunder.

*"PROCEEDINGS OF THE TAHSILDAR KALKULAM
Thiru.A.Madhavan.*

A2/1 8736/75 (1) Dated: 21-7-75

*Sub: VILLAGE ESTABLISHMENT - Kalkulam Taluk
Appointment of Thalayari - Order issued.*

*Ref:1.G.O.Ms.No.15914, Rev. dated. 19.4.75
2.Collector's G1/40516/72 dated 9.7.75*



WEB COPY



W.P. No.17628/2018

The following candidates are temporarily appointed as Thalayaris in the bifurcated villages noted against each. They should join duty forthwith in the new villages. They will be paid at the scale of pay fixed for the Thalayari under the Tamilnadu Pattern.

*for Tahsildar."
(emphasis supplied)*

7. The persons who were appointed as per the proceedings dated 21st July, 1975 cannot be guided pursuant to the order of regularisation contained in G.O.Ms.No.625, Revenue Department, dated 6th July, 1995. Even the said Government Order says that the services of persons appointed as part-time Assistants were regularised in the time scale of pay of Rs.600-10-750. If the writ petitioner was appointed on 21st July, 1975, along with others, on temporary basis in the scale of pay fixed for Village Assistants, the respondents cannot deny pensionary benefits to the writ petitioner and others who were so appointed along with him, giving reference to G.O.Ms.No.625, Revenue Department, dated 6th July, 1995, as payment of pension is guided by statutory rule. Therefore, the said Government Order 625, Revenue Department, dated 6th July, 1995 is applicable only to those who were initially appointed as part-time Village Assistants and subsequently given Full Time appointment by providing scale of pay to the post of Village Assistants at Rs.600-10-750 and not to those, like the petitioner, who were already temporary Village Assistants in the regular scale of pay.



WEB COPY



W.P. No.17628/2018

8. Rule 11 of the Tamil Nadu Pension Rules, 1978, of which reference has been given by the learned Single Judge, relates to commencement of qualifying service for payment of pension. The relevant portion of which is quoted hereunder.

"11. Commencement of qualifying service. —

(1) Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date of takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity. In the case of a Government servant retiring on or after 1st October, 1969, temporarily or officiating service in pensionable post whether rendered in a regular capacity or not shall count in full as qualifying service even it is not followed by confirmation."

It will be evident from the above rule that for payment of pension not only the appointment in the substantive capacity to be looked into but the appointment in an officiating or temporary capacity is also to be counted for commencement of qualifying service.

8. Insofar as the Village Assistants are concerned, they are guided by Special Rules known as Tamilnadu Village Assistants Pension Rules, 1996. Chapter-II of the said Rules deals with Pension and Gratuity and relevant portions of which are quoted hereunder :

"CHAPTER-I- GERGRAL

(1) (i) These rules shall be called the Tamil Nadu Village Assistants Pension Rules 1996.



W.P. No.17628/2018

(ii) They shall be deemed to have come into force on 1st June 1995.

(2) These rules shall apply to the full-time employed in the Revenue Village Assistants Department.

CHAPTER-11 - PENSION AND GRAVITY

3) The age of retirement shall be 60 years.

4) (a) In computing the length of service for calculation of pension and gratuity temporary, officiating and and permanent (full time) service shall be reckoned as qualifying service.

(b) If there are breaks in service on account of any reason, such breaks shall not have the effect of forfeiting the past service. provided the Assistants had been discharged or retired as per rules and orders.

(c) Leave without pay, suspension allowed to stand as a specific penalty, overstayal of jointing time or leave not subsequently regularized and periods of breaks shall not be reckoned as qualifying service.

7(1) A Village Assistant shall be eligible for pension if he has rendered a total qualifying service of 10 years or more and discharged or retired as per rules and orders.

(1) Pension shall be calculated at 50% of average emoluments drawn in the last 10 months before retirement for qualifying service of 66 half years and proportionate pension shall be paid for e qualifying service of less years subject to a minimum of Rs.990/-."



W.P. No.17628/2018

9. From the aforesaid Special Rules relating to Village Assistants, it would be evident that not only the permanent (full time) service to be counted for reckoning the period of qualifying service but, the period of service rendered as temporary (full time) or officiating (full time) shall also be counted for reckoning the period of qualifying service."

(Emphasis Supplied)

10. The Division Bench, hearing the appeal, concurred with the view taken by the learned single Judge on the ground that the petitioner therein was temporarily appointed as Thalayari in a post borne out of a cadre and was paid the time scale of pay fixed for Thalayari, which was evidenced by the proceedings of the Tahsildar drawing reference to the Government Orders. Further, the Division Bench, advertng to Rule 11 of the Tamil Nadu Pension Rules, 1978, held that qualifying service for the purpose of payment of pension would commence from the date when the employee takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity in a cadre post in a time scale of pay.

11. Further the Division Bench, advertng to the Tamil Nadu Village Assistants Pension Rules, 1995, more particularly Chapter II of the said rules which deals with pension and gratuity wherein clause 4 (a) provides that in

11



W.P. No.17628/2018

WEB COPY

computing the length of service for calculation of pension and gratuity, temporary, officiating and permanent (full time) service shall be reckoned as qualifying service. In such a backdrop, since the appointment of the petitioner therein was on temporary basis in a substantive post carrying time scale of pay, which post was borne out of a cadre, the direction of the learned single Judge to count 50% of the past services of the petitioner therein for the purpose of computing pension and gratuity was affirmed by the Division Bench.

12. The decision of the Division Bench was put in issue before the Apex Court in SLP (CC) No.21683/2009 by the State and the Apex Court, while dismissed the special leave petition by confirming the impugned order, however, left open the question of law for consideration in a different circumstance. Therefore, it is clear that on the facts of the case placed, the Apex Court had passed the said order and the relevant legal position and Rules governing the counting of past service for the purpose of pension and other retirement benefits was not deliberated by the Apex Court.

13. In view of the aforesaid direction, the Government issued G.O. Ms. No.33, Revenue (Ser-B(1)) Dept., dated 25.01.2010 for counting the past services



W.P. No.17628/2018

WEB COPY

of the petitioner therein for the purpose of computing pension and gratuity.

There could be no quarrel with the proposition that if a Village Assistant is appointed in a substantive vacancy, be it as a temporary, officiating or permanent post borne out of a cadre in a time scale of pay, necessarily that service would have to be reckoned for the purpose of calculating the total pensionable service, as provided for under the Tamil Nadu Pension Rules, as also the Tamil Nadu Village Assistants Pension Rules, 1995.

14. In the aforestated scenario, the moot question that requires determination is the nature of the post of Village Assistant, which alone would form the basis for counting the period of past service in the said post prior to its regularisation on 1.6.1995.

15. Thereafter, a Division Bench of this Court in *Velmayil case (supra)*, had occasion to consider a similar issue relating to counting of service of persons in the post of Thalayari's prior to 1.6.1995 for the purpose of pensionary benefit and after advertent to various decisions on the issue, in which differing views were taken, ultimately held as under :-

"13. Most importantly the learned Counsel appearing for the appellant relied upon a judgment of Hon'ble Mr. Justice



R.Suresh Kumar in W.P.(MD)No.14245 of 2018 dated 10.07.2018 wherein a person similarly placed filed a Writ Petition for issuing a Writ of Mandamus directing the respondents to count 50% of the services rendered by the petitioner therein as Village Assistant along with the petitioner's regular service from 01.06.1995 to 28.02.2004 and to sanction regular pension in terms of Rule 11 of the Tamil Nadu Pension Rules, 1978. The learned Judge after referring to G.O.Ms.No.9, Revenue (Sect) 7(1) Department, dated 28.02.2006 whereby Tamil Nadu Village Assistants Pension Rules, 1995 was brought into force, found that Rule 4(a) envisages that, for the purpose of computation of the length of service for calculation of pension and gratuity, service rendered by the Village Assistants on temporary basis or officiating basis or permanent basis, as a full time employee, shall be reckoned as qualifying service. The learned Judge held that an employee whether he was holding the post on temporary or permanent basis, his past service should be reckoned as a qualifying service for computation of length of service for calculation of pension and gratuity payable to the Village Assistants. The only argument advanced before the learned Single Judge in the said case was that the word "full time" mentioned in Rule 4(a) of the Rules is crucial and that service rendered on temporary, officiating or permanent basis by the Village Assistants shall be reckoned as qualifying service for the purpose of pensionary benefits only if such service rendered by them is a full time service. However, the learned Single Judge, contrary to the plain language of Rule 4(a) of the



WEB COPY



W.P. No.17628/2018

*Tamil Nadu Village Assistants Pension Rules, 1995 which contemplates counting of entire service rendered by the Village Assistants on temporary basis as a qualifying service, ruled to calculate only 50% of the past service rendered by the Village Assistants before they were brought under time scale of pay and regularised from 01.06.1995. However, a contrary view was taken by the Hon'ble Mr.Justice S.Vaidyanathan in **M.Vellaiyan v. The Secretary to Government, Department of Revenue and others** in the following lines:*

“13.The Division Bench and the learned Single Judge of this Court in the decisions quoted supra have not taken into account the Tamil Nadu Village Service Rules, 1980 and also the Tamil Nadu Village Servant Conduct Rules, 1983. In terms of the aforesaid rules, the posts held by persons, pursuant to the said Rules, belong to non-pensionable service. If the petitioner's services is counted as pensionable one, only then, Tamil Nadu Pension Rules will apply.

14.Rule 11(4) of the Tamil Nadu Pension Rules, 1978 quoted by the respondents may not be applicable to the facts of this case, as this has been introduced in the year 2010. Even otherwise, reading Rule 11(2) in isolation, the petitioner's services cannot be treated as a pensionable service.

15.It is no doubt true that, there is a Government order extending the benefit to one other employee granting pensionary benefits. That may not be applicable to the facts of this case. In view of the



WEB COPY



W.P. No.17628/2018

observations mentioned in the said order, which has been extracted supra, it has been made very clear that 'as a special case', the pensionary benefits can be extended and that it cannot be treated as a precedent.

16. Two wrongs will not make a thing right. The Government order extending the benefits to the employee whose name is referred supra itself is bad. But, however, this Court is not passing any order directing the respondents to stop the pensionary benefits, as he has the benefit of pension and will continue to enjoy the benefit. As long as Tamil Nadu Village Servants Service Rules, 1980 does not support the case of the petitioner and also as long as Rule 16(2) is there in the Rules, persons like the petitioner cannot be entitled to the pensionary benefits."

14. After referring to two judgments above referred to, the learned Single Judge has referred the matter to a Larger Bench on the ground that there are two conflicting views and that TamilNadu Village Assistants Service Rules, 1980 and Rule 4(a) of the Tamil Nadu Village Assistants Pension Rules, 1995 which was brought into force by G.O.Ms.No.9, Revenue (Sect) 7(1)Department, dated 28.02.2006 were not considered in the earlier judgments which are cited by the appellant as precedents."

* * * * *

16. The Government Order in G.O.Ms.No.473, Revenue and Disaster Management Department, Services Wing, dated 03.12.2018 is brought to the notice of this Court. After



referring to G.O.Ms.No.173 Revenue [Ser.8(1)] Department, dated 29.05.2014, the Government considered the order passed by this Court by a learned Single Judge of this Court in a batch of cases in W.P.(MD) Nos.6905 to 6908 of 2015 before the Madurai Bench of Madras High Court. Though the order of this Court in a batch of Writ Petitions was implemented by the above Government Order, relying upon Rule 4(1) of Tamil Nadu Village Assistants Pension Rules, 1995 it was observed as follows:

“7. The Tamil Nadu Village Assistants Pension Rules, 1995 came into force with effect from 01.06.1995. Rule 4(a) of the Rules makes it clear that computing length of service for calculation of pension and gratuity, temporary, officiating or permanent (full time) services should be reckoned as qualifying service. As per rule 7(1), a Village Assistant would be eligible for pension, if he has rendered total qualifying service of ten years or more. Calculation of pension is also given in Rule 7(ii) and Rule 8 provides for Death cum Retirement Gratuity and Family Pension calculation is given under Rule, 9. If any person has retired after 01.06.1995 and if he has the qualifying service computed from the date of his original appointment, either temporary, officiating or permanent basis, he will be entitled for pension, and the pension will be calculated in accordance with the Tamil Nadu Village Assistants Pension Rules, 1995. Hence, calculation of pension should be done on the basis of the Rules 7, 8



WEB COPY



W.P. No.17628/2018

and 9 of the Tamil Nadu Village Assistants Pension Rules, 1995.

8. Prior to 01.06.1995, all the Village Assistants were in part time service only. They are all governed by the Tamil Nadu Village Assistants Pension Rules, 1995 and hence, their services upto 01.06.1995 cannot be taken into account for qualifying service under the said Tamil Nadu Village Assistants Pension Rules, 1995. Moreover, the Tamil Nadu Pension Rules, 1978, do not apply to them. Therefore, the Government have decided to file Review Petition against the orders third read above.

9. The Government after careful examination of the above case and decided to implement the Orders passed by the Hon'ble Madurai Bench of Madras High Court in W.P.Nos.6905 to 6908 of 2015 and W.P. (MD)Nos.7446 to 7449 of 2016 dated 12.07.2016 filed by the petitioners and accordingly directs that the respective part time services rendered by the petitioners Tvl.G.Ponnan, V.Vembulu, E.Arumugam, P.Alagarsamy, K.Pandi, R.Rajangam, V.Gurusamy and P.Thirugnanam prior to 01.06.1995 be taken into account for their pension calculation, and the pension may be granted to them from the date of issue of order as a special case, subject to the outcome of the Review Petition to be filed by the Government in this regard."

17. From the above Government Order, it is evident that the Government wants to contend before this Court and in



WEB COPY



W.P. No.17628/2018

every forum that the Village Assistants before 01.06.1995 were in part time service and that therefore, their services upto 01.06.1995 cannot be taken into account for qualifying service under the pension Rules applicable to them, namely, the Village Assistants Pension Rules, 1995. In para 7, the Government accepted the position that for computing length of service for retirement benefits, the service rendered by a person from the date of original appointment either temporary, officiating should be taken. However, para 8 is self-contradictory inasmuch as it suggests that all Village Assistants were engaged on part time basis. The service of Village Assistant is permanently required and it was always a full time job as held in several judgments. Despite the stand taken by the Government, the Government has implemented the order of this Court granting relief to several persons. It has been repeatedly held by this Court in number of judgments without any controversy that the services rendered by Thalayaris till their service was regularised with effect from 01.06.1995 were on permanent basis. This Court has already considered the nature of job and the work rendered by Thalayaris. It is to be noted that after the service of Thalayar is was regularised as Village Assistants with effect from 01.06.1995, the nature of duties were defined. However, the Thalayaris who were appointed earlier on consolidated pay were also doing full time job which can never be treated as temporary or part time. Since Thalayari in those days was a key man rendering valid assistance to revenue department and officials of Revenue Department, he could never be dispensed



WEB COPY



W.P. No.17628/2018

with. When the respondents themselves have admitted Rule 4(a) of Tamil Nadu Village Assistants Pension Rules, 1995, there is no scope for confusion except the issue whether the appellant is entitled to count half of the services put in by him in the cadre of Thalayari for the period upto 31.05.1995 or the entire period of service. In such circumstances, the judgment of Hon'ble Mr.Justice S.Vaidyanathan in M.Vellaian v. Secretary to Government, Department of Revenue and others may not hold good having regard to the specific provisions of Tamil Nadu Village Assistants Pension Rules, 1995. Leave alone the provisions of the Rules which have been given effect to or interpreted in several precedents including the two judgment relied upon by the learned Single Judge in this case in several judgments of Division Bench, this Court has taken a consistent view that the petitioners are entitled to count 50% of their past service they have rendered as Thalayaris upto 31.05.1995 along with the regular service for the purpose of pension. It is admitted that the decisions of this Court by the Division Bench have been confirmed by the Hon'ble Supreme Court in several cases. It is also admitted that the Government has implemented the consistent view expressed by this Court in several individual cases. It was on account of the fact that some of the precedents and the applicable rules have not been brought forth by the Government Pleaders properly before some of the learned Judges of this Court, the issue which has been raised by the Government has been answered against the Government in several precedents and the ratio settled by this Court has been followed and implemented in several individual



W.P. No.17628/2018

cases by the Government. In such circumstances, this Court is of the view that there is no scope for reference to a larger Bench and that the order impugned in W.P.(MD) No.70 of 2019 is set aside. The Writ Petition in W.P.(MD)No.70 of 2019 stands allowed in tune with the earlier precedents of this Court. The first respondent is directed to pass orders counting 50% of the services of the appellant put in by him as Thalayari for the period from 07.01.1983 to 31.05.1995 for the purpose of calculation of pension along with regular services put in by him as Village Assistant and Village Administrative Officer and to send revised pension proposals within a period of six weeks from the date of receipt of a copy of this order.”

(Emphasis Supplied)

16. The above view expressed by the Division Bench, with due respect to the learned Judges on the Bench, does not speak about the Tamil Nadu Village Assistants Pension Rules, 1995 (for short ‘Rules, 1995’), nor is there consideration/deliberation of the provisions of the conduct, service and pension rules, for the purpose of counting the past service, as the Village Assistants form a separate cadre and provision of pension was conferred on the basis of the aforesaid service, conduct and pension rules and the Tamil Nadu Pension Rules, 1978 would have no application to the said posts.



W.P. No.17628/2018

WEB COPY

17. However, in the aforesaid decision, the decision of a learned single Judge in *Vellaiyan case (supra)* was referred to and the Division Bench had rejected the reasoning recorded therein, but alas, without any advert to the provisions of Rules, 1995. Even a bare perusal of the order in *Velmayil case* shows that it could only be held to be more on sympathy rather than on the statutory prescriptions, as at one point, though a stand was taken by the Government that the post of Village Assistant was part-time till the date of their regularization on 1.6.1995, however, the nature of the job rendered by the Village Assistants had weighed in the mind of the Division Bench rather than the actual nature of service of the Village Assistants. In the absence of there being any discussion on Rules, 1995, which would form the basis for extending the benefit, the said decision cannot be held to be binding and the reliance placed on the same on behalf of the petitioner before the learned single Judge leading to this reference is wholly erroneous.

18. One other order in ***State of Tamil Nadu & Ors. – Vs – Chinna Karuppaiah & Anr. (W.A. (MD) Nos. 1254 & 1255/2019 – Dated 19.11.2019)***, was relied upon, wherein another Division Bench had occasion to consider the very same issue relating to counting the service of Village Assistants prior to their



W.P. No.17628/2018

WEB COPY

regularization for the purpose of determining the qualifying service, which decision had been referred to in *Balachandran & Krishnan cases (supra)*. However, it is to be pointed out that the said decision would not stand relatable to the issue in the present case, as the said case rested on the status of the service rendered by a Village Assistant, which is to be counted for the purpose of qualifying service, though the Division Bench has referred to the decision in *K.Raman Nair case (supra)*. However, it is to be noted that the said decision also did not advert to Rules, 1995; rather the whole genesis of the case revolved around the Tamil Nadu Village Servants Conduct Rules and Tamil Nadu Village Servants Service Rules, which were relied on for the purpose of determining the qualifying service rendered by the Village Assistants prior to their services being regularized from 1.6.1995. Therefore, the said decision also cannot be pressed into service in the facts of the present case.

19. Amidst the aforesaid decisions, a Full Bench was constituted to answer the following question of law, as was referred to it in *Kaliyamoorthy case :-*

“In view of the provisions of the Tamil Nadu Pension Rules, as amended, if a Government servant is regularized in service after 1.4.2003, whether such a person will be entitled to count 50% of the past service rendered prior to regularization for the



WEB COPY



W.P. No.17628/2018

purpose of computing his pension under the old pension scheme.”

20. Even at the very outset, it is to be pointed out that the issue before the Full Bench revolved around the application of Tamil Nadu Pension Rules, 1978, insofar as persons, who were granted regularization post 1.4.2003. However, the post of Village Assistants, which is the subject matter of the present *lis*, is covered under Rules, 1995 and the Tamil Nadu Pension Rules, 1978 has no application to the case of Village Assistants. The Full Bench, in the aforesaid reference, analysing the various provisions of the Acts and Rules, more particularly governing the Government servants, who were covered under the Tamil Nadu Pension Rules, 1978, went on to record its reasoning and rendering a finding as hereunder :-

“29. Having regard to the above rule position, we proceed to examine the claim of the writ petitioners. Admittedly, the writ petitioners herein were appointed in various departments of the Government in non-provincialised services, on consolidated pay, honorarium or daily wage basis, on contingency basis. They were not appointed against any sanctioned post or regular post. For having rendered such service, they were paid daily wage or wages from the contingency fund. To be specific, the writ petitioners were not appointed in a cadre post whether on temporary or permanent



WEB COPY



W.P. No.17628/2018

basis against vacancies which were duly notified. They were appointed on daily wage basis prior to 01.04.2003 on various dates. The service of some of the petitioners were also admittedly regularised after 01.04.2003 in a cadre post as and when permanent vacancies arose or had been notified. The writ petitioners therefore claimed that they are entitled to count half of the service rendered by them on daily wage basis or as contingent employees or on honorarium basis or in non-provincialised services etc. along with the regular service as has been contemplated under Rule 11 (4). The petitioners also claimed equity on par with one Murugan, in whose favour, the Government passed G.O. (D) No.332, Environment and Forest Department dated 19.11.2008 by which the service rendered by the said Murugan, on daily wage basis for about 20 years was ordered to be counted along with his regular service rendered by him till his retirement on 30.09.2005. In other words, even though the service of the said Murugan was regularised after 01.04.2003, yet, as a special case, the Government issued G.O. (D) No.332, Environment and Forest Department dated 19.11.2008 and ordered to count half of the service rendered by him on daily wage basis along with his regular service. This had apparently sparked and/or kick-started a volley of writ petitions to be filed before this Court at the instance of persons similarly placed like the writ petitioners in this batch. This Court had also, based on the order passed by the Government in G.O. (D) No. 332, Environment and Forest Department dated 19.11.2008 directed the Government to count half of the service rendered



WEB COPY



W.P. No.17628/2018

by the persons similarly placed like the petitioners along with their regular service, purportedly on the ground of equity. The State Government filed writ appeals before the Division Bench of this Court, as against few cases in which such directions were issued by the single Bench.

* * * * *

31. On behalf of the writ petitioners, it was contended that the writ petitioners have been temporarily employed with nomenclature such as daily wage employees, on consolidated pay or on honorarium basis etc. and as per Rule 11 (1) the service rendered by them in such temporary employment has to be counted along with the regular service in a cadre post. We wish to observe that the word temporary or officiating service employed in Rule 11 (1) is referable to 'temporary appointment' contemplated under Rule 10 (a) (i) of Tamil Nadu State and Subordinate Services Rules. On a reading of Rule 10 (a) (i), the wordings employed thereof are explicit and clear. A temporary appointment made to a government service is the one which is made in a post borne on the cadre of a service, class or category, meaning thereby such temporary appointment is made in an existing vacancy or notified vacancy. Rule 10 (a) (i) further makes the position clear that such appointment is permissible to be made by the appointing authority in case of emergency to fill the vacancy, in public interest. For such appointment, the appointing authority has to form an opinion that the procedural process for appointment to the cadre post will take some time and that such delay would prejudice the public interest. In such



WEB COPY



W.P. No.17628/2018

circumstances, Rule 10 (a) (i) can be invoked for appointing a candidate on temporary appointment in a sanctioned post. The service of such person, though appointed on temporary appointment can later be regularised by following the due procedure. The significance for invoking Rule 10 (a) (i), apart from public interest, is the existence of sanctioned post or vacancy in a post borne on the cadre of a service, class or category. Thus, Rule 10 (a) (i) cannot be invoked in the absence of an existing vacancy in a cadre post. Therefore, we are of the view that the temporary appointment mentioned in Rule 11 of the Pension Rules, in the realm of Service Law Jurisprudence, is referable only to Rule 10 (a) (i) of the Tamil Nadu State and Subordinate Services. The writ petitioners were however appointed on daily wage basis on payment of honorarium or consolidated pay and did not come within the fold of Rule 10 (a) (i) of the Tamil Nadu State and Subordinate Services Rules. Only the appointments made under the provisions of Rule 10 (a) (i) of the aforesaid Rules alone can be considered as temporary appointment. Therefore, the submissions made on behalf of the petitioners relying upon Rule 3 (o) has to be rejected. Admittedly the Writ Petitioners were not appointed invoking Rule 10(a)(i).

* * * * *

34. Rule 11 (4) of the Tamil Nadu Pension Rules, 1978 confers an additional benefit to such class of Government servants to include half of the service rendered in the above capacity for determining qualifying service provided their service was regularized before 01.04.2003. Rule 11 (4) by itself



WEB COPY



W.P. No.17628/2018

is not intended to deny pension to respondents/writ petitioners if appointment was prior to 01.04.2003 in the cadre post, whether temporary or permanent.

35. Rule 11 (4) merely provides a method for determining the 'qualifying service' for government employees who were absorbed into service before cut-off date of 01.04.2003.

36. The significance of Rule 11 (4) is to bring the service of a government employee / servant within the realm of qualifying service to count half of the service rendered under the State

Government in non-provisionalised service, consolidated pay, honorarium or daily wages basis before 1st April 2003 for retirement benefits, if the absorption to service was before 01.04.2003.

37. Rule 11 (4) of the Tamil Nadu Pension Rules, 1978 allows a Government employee / servant appointed in a cadre post before 01.04.2003 as per the Rules whether in temporary or permanent capacity to include 50% of the service rendered in (i) non-provincialised services; (ii) Consolidated pay; (iii) honorarium; or (iv) daily wage basis along with regular service subject to conditions stipulated therein.

38. For instance if a government employee/servant was appointed and absorbed between the cut off dates i.e. 01.01.1961 and 01.04.2003, then he/she will be entitled to include half of the service rendered under the State Government in (i) non-provincialised services; (ii) Consolidated pay; (iii) honorarium; or (iv) daily wage basis into his/her services for determination of qualifying service.



39. *On the other hand, if a Government employee / servant was not absorbed between the aforesaid cut off dates, he/she will not be entitled to include half of the service rendered under the State Government in (i) non-provincialised services; (ii) Consolidated pay; (iii) honorarium; or (iv) daily wage basis into his/her services even though such person may be entitled to Government Pension under the Rule if he/she was appointed in a cadre post on or before 01.04.2003 but was absorbed after the said date.*

40. *For example, if a person is appointed prior to 01.04.2003 in a non-provincialised service or on consolidated pay or on honorarium or daily wage basis and later to a cadre post on temporary basis under Rule 10 (a) (i) of The Tamil Nadu State and Subordinate Service Rules before 01.04.2003 and such service is regularised after 01/04/2003, such Government employee is eligible for Government Pension under the Tamil Nadu Pension Rules but at the same time would not be eligible to include half of services rendered in such capacity viz., i) Non-provincialised Services ii) Consolidated pay; iii) honorarium; or iv) daily wage basis to his regular service.*

41. *Thus, a government servant who may have been appointed before the cut-off date of 31.03.2003 may be entitled to government pension if he satisfies the requirement of qualifying service in Rule 3(o) of the Tamil Nadu Pension Rules, 1978. However, such a person will not be entitled to add half of the past service held in any one of the four capacity mentioned above prior to 01.04.2003 since his regularisation is*



WEB COPY



W.P. No.17628/2018

subsequent to the cut off date. Therefore, only those who were appointed prior to 01.04.2003 whether as temporary appointment but in accordance with Rule 10 (a) (i) alone will be entitled to get pension.

42. The cut off date i.e. on or after 01.04.2003 in proviso to Rule 2 of the Tamil Nadu Pension Rules, 1978 will not per se bar a person from getting pension if such a person had joined the service in accordance with the provisions of Tamil Nadu State and Subordinate Service Rules i.e in the cadre whether on temporary or permanent basis. Services rendered before the cut off date of 01.04.2003, can be added to the regular service only if the service was regularised before the said date for determining the qualifying service. Therefore, in our opinion, it would be appropriate to say that Rule 11 (4) gives the meaning of qualifying service rather than giving significance to cut off date. Therefore, it is clear that only if the appointment is in accordance with the Rules and such appointment is prior to 01.04.2003, 50% of the past service can be added along with the regular service.

* * * * *

44. The aforesaid Judgment of the Honourable Supreme Court would squarely apply to this case. Merely because this Court has passed multiple number of orders in favour of some of the similarly placed persons like the writ petitioners, it will not operate as res judicata or it will preclude the State Government from questioning those orders in a parallel or similar proceedings. In such circumstances, we are of the view that the orders, hitherto passed by this Court, both single



WEB COPY



W.P. No.17628/2018

Bench or the Division Bench will not operate as a bar for maintaining these writ appeals or writ petitions or those orders will not be considered as the one which laid down any binding precedent to be followed in other cases. An order, which was not passed in accordance with the statutory provisions, need not be followed by the Court at the instance of similarly placed persons."

21. As already stated above, the aforesaid decision of the Full Bench is with regard to Tamil Nadu Pension Rules, 1978, but the ratio laid down therein with regard to the manner in which a service in a post has to be appreciated in service jurisprudence has been clearly spelt out therein, wherein the Full Bench has held that for seeking the benefit of counting past service prior to regularisation, the post in which a person is accommodated should be either temporary or officiating or permanent and should be borne out of cadre of a service, class or category. In fine, there should be a cadre post within which the person should be fitted in, which alone would give a subsisting right to the said person to seek for counting of the said service upon regularization. Insofar as persons appointed on daily wage basis or on payment of honorarium or consolidated pay and do not come within the purview of a post borne out of a cadre, such persons would not be entitled to seek counting of past service in a post not borne out of a cadre.



WEB COPY

22. The decision in *Balachandran case*, which forms the basis for the divergent views, had deliberated the decision of the Full Bench in *Kaliyamoorthy case (supra)* and the said decision sheds a great deal of light with respect to the post of Village Assistants/Talayaris and Village Officers/Karnams, their conditions of service and their entitlement to retirement benefits. In *Balachandran case*, reference has been made to the provisions of the *Tamil Nadu Pension Rules, 1978, Tamil Nadu Village Servants Conduct Rules, 1980, Tamil Nadu Village Servants Conduct Rules, 1983 and Fundamental Rules and Tamil Nadu Leave Rules, 1978*, for appreciating the stand for counting the period of service rendered prior to regularisation in the post of Village Assistant and for better understanding, the relevant portion is quoted hereunder :-

“5.The Village Headmen (Talayaris) were appointed on a part time basis decades ago. They were brought under the rules framed in exercise of power conferred under Section 309 of the Constitution of India in supersession of the Tamil Nadu Village Officers Service Rules, 1970 and of the Tamil Nadu Village Officers Service Rules, 1978. Thereafter, Tamil Nadu Village Servants Conduct Rules, 1983 came into the picture. These rules have been made applicable to all those appointed under the Madras Proprietary Estates' Village Service Act, 1894. Thus, these Rules were made applicable to the part-time



WEB COPY



W.P. No.17628/2018

service of Village Headman/Village Servant, who continue to hold the same status. We may note, Village Assistant, Village Servant and Village Headman are all one and the same.

6.In the year 1978, separate pension rules have been brought forth for the Government servants working in the State of Tamil Nadu. Of this, Rule 11 speaks of reckoning the qualifying service rendered by a Government servant prior to the regular service. Explanation to Rule 11 has been brought forth with effect from 01.01.1979 and Rule 11(2) with effect from 15.04.1996 and Rule 11(3) with effect from 14.02.1996. Similarly Rule 11(4) has been brought into the statute from 09.02.2010.

7.As the Village Servants viz., Talayaris were not brought under the regular full time employment, they made several representations, right from the year 1980 and to consider the request made, a High Level Committee was constituted. Accordingly, a recommendation was made to make such part time Village Servants/Village Assistants as full time Government servants. The aforesaid recommendation was accepted by the Government in G.O.(Ms.) No. 625, Revenue Department, dated 06.07.1995, indicating that separate rules should be made for them. Accordingly, another Government order was passed in G.O.(3D) – No.9, Revenue (Ser.7(1)) Department, dated 28.02.2006, paving the way for Tamil Nadu Village Assistant Pension Rules, 1995.

* * * * *

10. The Tamil Nadu Pension Rules, 1978:



Rule 3(o) defines the 'qualifying service'. A 'qualifying service' would mean only permanent or officiating service rendered in a post included in pensionable establishment. Thus, the said Rule makes the position very clear that the services will have to be permanent or officiating to be rendered in a post included in the pensionable establishment. The aforesaid provision is reproduced hereunder:

"3(o) 'qualifying service' means permanent or officiating service (including temporary service under emergency provisions) rendered in a post included in a pensionable establishment;

Rule 11 is the important rule, which is appositely referred hereunder:-

"11. Commencement of qualifying services. - (1) Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity. In the case of a Government servant retiring on or after the first October 1969, [***] temporary or officiating service in the pensionable post whether rendered in a regular capacity or not shall count in full as qualifying services even if it is not followed by confirmation.

* * * * *

(i) Service paid from contingencies shall be in a job involving whole time employment and not part-time for a portion of the day.



WEB COPY



W.P. No.17628/2018

(ii) Service paid from contingencies shall be in a type of work or job for which regular posts could have been sanctioned, for example Chowkidar.

* * * * *

11. The Tamil Nadu Village Servants Conduct Rules, 1980:

These set of Rules are obviously prospective in nature. Rule 3 speaks about mode of recruitment. These Rules also speak about the position of part-time Village Servants viz., Talayaris. They are accordingly made entitled to payment of an amount for the total service put in as determined in sub-rule (2) of Rule 14. Rule 14(1) and (2) are accordingly, reproduced hereunder:-

“14. Amount to be paid on retirement. –

(1) Every person who ceases to hold the post of part-time Village Servant by reason of sub-rule (i) of rule 13, shall be paid an amount for the total service put in by him as part-time Village Servant and such amount shall be determined in accordance with the provision of sub-rule (2).

(2) The amount referred to in sub-rule (1) shall be calculated at the rate of one-half of the monthly emoluments for every year of total service put in by the person referred to in sub-rule (1).

* * * * *

12. The Tamil Nadu Village Servants Conduct Rules, 1983:-

These Rules deal with the conduct of the Village Servants, being parttime Government servants. Under Rule 3, taking note of the employment being a part-time for Village Servants, a concession has been given to facilitate taking up private



trade or employment either as part-time work or employment, provided they do not interfere with their legitimate duties. The only caveat is the prior permission. Thus, there can never be any iota of doubt on the nature of work being part time. The said Rule is appositely referred 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 charge village.”

As demands were made right from the inception of Tamil Nadu Village Servants Conduct Rules, 1980 by the part-time Talayaris, a decision was made by the Government to induct them as full-time employees by Government Order in G.O.(Ms) No.625, Revenue Department, dated 06.07.1995, as aforesaid. As per the said Government Order, there is a change in status and for the first time, the request made by the part-time Village Assistants (Talayaris) was accepted. This was followed by the Government Order in G.O.(3D) No.9, Revenue (Ser.7(1) Department, dated 28.02.2006, fixing the Family Pension and Death -cum- Retirement Gratuity to such of those persons. This is the history and story of Village Assistants, who by their



WEB COPY



W.P. No.17628/2018

persistent pleas, became a regular full-time Government servants due to the concession granted by the Government on the recommendation made by the High Power Committee.

* * * * *

19. Now, let us go into the subsequent Government Orders passed, followed by Rules viz., Tamil Nadu Village Assistants Pension Rules, 1995. We have already discussed the Government Order, which came into existence only at the instance of the respondents Village Assistants, who were working in such capacity as part timers. For the first time, under the said Government Order, a regular time scale of pay came into existence. This is a very important point to be noted with respect to the status of the respondents as part-time Talayaris and they have been brought into regular Government Service. Therefore, regular time scale of pay was fixed with effect from 01.06.1995. The subsequent Rules have been framed to take care of their interest. We may note that Rule 2 to reiterate the aforesaid position, which does not create any doubt in our mind. Under Rule 7, the eligibility of a Village Assistant would arise only when a Village Assistant renders qualifying service. Similarly, under Rule 4(a), the length of service for calculation of pension and gratuity, temporary, officiating and permanent (full-time) service alone should be reckoned as qualifying service. Now, this Rule has been given a go-bye. Resultantly, what the respondents (Talayaris) seek is a relief contrary to their regularisation order, by which, they were brought under the regular time scale of pay with effect from 01.06.1995 and the Rules framed



WEB COPY



W.P. No.17628/2018

thereafter. Therefore, they cannot approbate and reprobate and it is only on their request, part-time service was converted into full-time service prospectively, creating the status of regular post with regular time scale of pay.

* * * * *

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.”

(Emphasis Supplied)

23. From the above, it is clear that the posts of Village Assistants and Village Officers were under part time employment, which alone formed the basis for issuance of G.O. No.625 granting regularisation of service to the said employees holding the part-time posts of Village Assistants. In fact, even in the decision in *Velmayil case* it has been the stand of the Government that the Village Assistants were under part-time employment. However, without appreciating the provisions of the relevant Rules governing the conduct, service



W.P. No.17628/2018

WEB COPY

and pension of the Village Assistants, the Division Bench had negated the contention, which is *per se* erroneous and arbitrary.

24. This Court had extracted the material portion of the decision in *Balachandran case* in which the Division Bench had dealt with the various provisions of the conduct, service and pension rules governing the Village Assistants and for the said reason, this Court is not inclined to multiply the same by reproducing the same once over, but suffice to rely on the same to give its opinion on the reference.

25. True it is that a Division Bench judgment is binding on a coordinate Bench, but it is not as if that the binding nature could not be broken if the coordinate Bench could distinguish or establish that the earlier decision was not on the touchstone of law applied to take it to its logical conclusion. The Division Bench in *Balachandran case* though had occasion to deal with *Velmayil and Chinna Karuppaiah case* had clearly distinguished as not binding on it for the simple reason that the said decisions did not deliberate on the nature of job rendered by the Village Assistants read harmoniously with the conduct, service and pension Rules relating to Village Assistants. Therefore, once the decisions in



W.P. No.17628/2018

Velmayil and Chinna Karuppaiah case have not dealt with the provisions of the Rules governing the service, conduct and pension of the Village Assistants, the same cannot be said to be binding precedents for the Division Bench in *Balachandran case* to make any reference to a Larger Bench. Only on that premise, the Division Bench in *Balachandran case* had deliberated on the provisions of the relevant rules governing Village Assistants and taken it to its logical conclusion.

26. In the said background, as afore stated, the provisions of the various Rules governing the conduct, service and Pension as also the provisions of the Tamil Nadu Pension Rules, 1978 have been taken into consideration in *Balachandran case* which paints a clear picture that the Village Assistants were in part-time employment with concession to take up other employment, without interfering with their work upon obtaining prior permission. Therefore, by no stretch the employment of Village Assistants prior to 1.6.1995 could be said to be service borne out of a cadre post, as such employment was neither in a substantive vacancy nor temporary or officiating as any post in a substantive vacancy or of a permanent nature, the same would not allow the employees to take up other employment.



WEB COPY

27. Further, there is a clear indication that the Tamil Nadu Pension Rules covers the persons under the employment in Government service and only for that purpose separate rules in the form of Rules, 1995, have been framed for the purpose of granting pensionary benefits to the Village Assistants. As already stated above, the Village Assistants are covered under the Tamil Nadu Village Assistants Pension Rules and they would not fall within the ambit of the Tamil Nadu Pension rules, 1978, as the said rules are not applicable to the services of Village Assistants/Talayaris, they being in a non-pensionable establishment and, that too, as part-time employees not borne in a cadre post. Further, when the service of Village Assistants/Talayaris prior to regularisation not being in a cadre post the said period cannot be counted for the purpose of pension under the Tamil Nadu Village Assistants Pension Rules, as only employees in temporary, officiating and permanent posts are permitted to count the said service for arriving at the qualifying service, as is prescribed under Rule 4 (a) of Rules, 1995. Similar view has been expressed by the Full Bench relating to Government Servants under the Tamil Nadu Pension Rules, 1978, in *Kaliyamoorthy case*, which is *pari materia* to the service of Village Assistants/Talayarius and, therefore, the Village Assistants would not be entitled to count their service rendered in a part-



W.P. No.17628/2018

WEB COPY

time employment prior to the regularisation of the post on 1.6.1995 for the purpose of calculation of pensionary benefit.

28. Further, it is to be pointed out that the decisions in *Velmayil* and *Chinna Karuppaiah case (supra)* were prior to the decision of the Full Bench in *Kaliyamoorthy case*. *Kaliyamoorthy case* predominantly dealt with pensionable service of Government servants and the manner in which the service is to be counted after 1.4.2003. Further, as already pointed out above, the relevant provisions of Rules, 1995 and the Tamil Nadu Pension Rules, 1978 and so also the other Rules, which govern the conditions of service and conduct of the Village Assistants were not taken into consideration in *Velmayil and Chinna Karuppaiah case*.

29. However, it is to be pointed out that to a significant extent, the decision in *Raman Nair case* sails along with the decision in *Balachandran case* to the extent that there is a clear finding in *Raman Nair case* that only posts which are borne out of a cadre to which a person is appointed temporarily or in an officiating capacity or permanent employment (full time) alone are entitled to seek the benefit of counting their service in the post of Village Assistant, as



W.P. No.17628/2018

WEB COPY

provided for under Rule 4 (a) of Rules, 1995, which is squarely the ratio laid down in *Balachandran case*. The issue of whether a person employed as part-time employee in the post of Village Assistant prior to 1.6.1995 was entitled to count his past services for the purpose of pensionary benefit was not the subject matter of consideration in the decision in *Raman Nair case* and, therefore, the said decision cannot be relied on by the Village Assistants to seek the relief granted therein so long as they have not been employed either temporarily or in an officiating capacity or in a permanent post, which is borne out of the cadre and in a time scale of pay.

30. It is submitted by the learned Advocate General across the Bar that the post of Village Assistants is a part-time employment and only on benevolence, the Government had considered and regularised the services of the Village Assistants from 1.6.1995 and, therefore, the service of persons in the post of Village Assistants prior to 1.6.1995, by no stretch, could be held to be a post borne out of a cadre. Further, there is no material placed in the form of statutory prescription that the posts held by the Village Assistants are posts borne out of a cadre and carried time scale of pay and in the absence of such a material,



W.P. No.17628/2018

WEB COPY

counting 50% of the said period rendered in a non-provincialised service for the purpose of calculating the pensionary benefits would not arise.

31. The findings recorded in *Balachandran case* has clearly laid down the correct law, more particularly appreciating the ratio with regard to the legal position that only such of the posts borne out of cadre alone are entitled for pensionable benefit as has been enunciated in *Kaliyamoorthy case* with reference to qualifying service and further holding that the persons employed in the said posts alone are entitled to seek for counting 50% of their service rendered in the said post prior to regularisation for the purpose of pensionary benefit. However, the decisions in *Velmayil* and *Chinna Karuppaiah case* have not laid down the correct law as they have neither adverted to the position of law relating to posts borne out of the cadre and also with reference to the part-time employment of the Village Assistants and, therefore, the said decisions can only be said to be *per incuriam* as the relevant provisions of the various Rules governing the conduct, service and pension of Village Assistants have not been adverted to.

32. Further, as afore stated, the decision in *Raman Nair case* also would be of no help in advancing the case of Village Assistants for counting 50% of the



W.P. No.17628/2018

WEB COPY

service rendered prior to 1.6.1995 for the purpose of arriving at the total service as, to a particular extent it supports the decision in *Balachandran case*. Further, the said decision stands on an entirely different set of facts which are specific to the said case and cannot be taken to be the factual position that could be discerned with regard to the post of Village Assistants enmasse, who were appointed on part-time basis prior to 1.6.1995. Further, the appeal against the decision in *Raman Nair case* before the Apex Court in SLP (CC) No.21683/2009 having left the legal issue open, the said decision of the Apex Court would not in any manner tilt the balance against the decision in *Balachandran case* to doubt the correctness of the said order nor would the decision of the Apex Court in any manner enure to the benefit of the case of the Village Assistants.

33. In fine, on the reasons aforesaid, this Court answers the reference in the following terms :-

“The persons, who were employed as Village Assistants/Talayaris prior to 1.6.1995, the date on which the service of Village Assistants/Talayaris were regularised, would not be entitled to count 50% of their service rendered in the pre-regularised period, viz., prior to 1.6.1995, for the purpose pensionary benefits, as the



WEB COPY



W.P. No.17628/2018

said posts held by them were part-time posts and not posts borne out of service or cadre.”

34. Though this Court is only required to answer the reference and send the matter back to the learned single Judge for further hearing, in view of the fact that the learned counsel for the parties have made their submissions not only on the merits of the case, but also on the basis of the facts in the present writ petition and have no objection to this Bench deciding the case, this Court would proceed to analyse the facts of the present case to find out whether the petitioner is entitled for seeking the said benefit by applying the ratio laid down above.

35. A perusal of the materials available on record, more particularly, the communication addressed by the petitioner to the respondents seeking to count the period of service rendered by the petitioner as Village Assistant prior to 1.6.1995, it clearly shows that the petitioner himself has admitted that he was a part-time Village Assistant, as is evident from the subject of the communication. When the fact that the petitioner was a part-time Village Assistant has been admitted by the petitioner himself and the petitioner has admitted that he was neither occupying the post of Village Assistant temporarily nor in an officiating



W.P. No.17628/2018

WEB COPY

capacity nor in a permanent capacity, which post is borne out of a cadre and, therefore, applying the answer to the reference, it can safely be concluded that the petitioner is not entitled to have 50% of his service, rendered prior to 1.6.1995, counted for the purpose of calculating the pensionary benefits. Therefore, the relief sought for by the petitioner cannot be granted and necessarily this writ petition deserves to be dismissed.

36. Accordingly, this writ petition fails and the same stands dismissed.

There shall be no order as to costs.

(G.J.J.) (M.D.I.J.) (K.B.J.)

06.04.2026

Index : Yes

GLN



W.P. No.17628/2018

WEB COPY

To

1. The Principal Secretary
Department of Revenue
Government of Tamil Nadu
Secretariat, St. George Fort
Chennai 600 009.
2. The Commissioner
Revenue Administration
Ezhilagam, Chempauk
Chennai 600 005.
3. The District Collector
Office of District Collector
Tiruppur, Tiruppur District.
4. The Tahsildar
Dharapuram Taluk
Tiruppur District.



WEB COPY



W.P. No.17628/2018

DR.G.JAYACHANDRAN, J.
M.DHANDAPANI, J.
AND
K.KUMARESH BABU, J.

GLN

**PRE-DELIVERY ORDER IN
W.P. NO.17628 OF 2018**

**Pronounced on
06.04.2026**