

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 persistent pleas, became a regular full-time

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Government servants due to the concession granted by the Government on the recommendation made by the High Power Committee.

13.As the Village Officers (Karnams) were functioning only by inheritance, without any qualification, the Rules were brought forth abolishing such posts. They laid a challenge to the Rules. In pursuant to the orders passed by the Hon'ble Apex Court, they were accordingly, re-employed as they had the requisite qualification. Admittedly, they were in a non-pensionable service, apart from they being part-time workers. There is a continued dis-entitlement under Rule 11 of the Tamil Nadu Pension Rules, 1978 from recognising half of the services rendered. Now, we are dealing with a case involving such persons whose Writ Petitions were allowed, placing reliance on the earlier orders passed.

SUBMISSIONS OF THE APPELLANTS/RESPONDENTS:

14.All these appeals have been preferred by the State as against the one, where the private party filed the appeal.

15.Learned Additional Advocate General appearing for the appellants submitted that admittedly the respondents are working in a non-pensionable establishment, which does not involve a cadre of posts. These writ petitioners were part-time employees. The Rules also clearly indicate the aforesaid position. In fact, they were brought under regular cadre either by the Government Order passed in G.O.(Ms) No.675, Revenue Department, dated 06.07.2015, applicable to Village Assistants and by way of re-employment, involving recruitment process, for Village Karnams in pursuant to the orders passed by the Apex Court. The issue involved is no longer *res integra* as the aforesaid position has been dealt with by the Larger Bench of this Court in ***Government of Tamil Nadu and others v. R.Kaliyamoorthy*** reported in ***2019(6) CTC 705***. There is no estoppel against the statute and a decision rendered without considering the relevant provision cannot be termed as a binding precedent. In support of the contentions, reliance has been made on the following decisions:-

- (i) ***M.Annaimuthu v. State of Tamil Nadu [MANU/TN/0142/2009]***
- (ii) ***Union of India v. Gandiba Behera [2019 SCC Online SC 1444]***
- (iii) ***O.Ramachandran v. Union of India [MANU/TN/2555/2016]***
- (iv) ***Maharashtra State Cooperative Cotton Grovers' Marketing Federation v. Employees Union [1994 Supp (3) SCC 385]*** and

(v) *Dhyan Singh v. State of Haryanan [(2002) 10 SCC 656]*.

16. Supporting the contentions of the learned Additional Advocate General, learned Standing counsel appearing for the Accountant General submitted that a very reading of the Rules themselves make the position clear that the Writ Petitioners were holding part-time jobs in the un-sanctioned posts. There appears much disconnection insofar as Village Officers (VAO) and Karnams are concerned. Therefore, these Writ Appeals are to be allowed.

SUMMISSIONS OF THE RESPONDENTS/WRIT PETITIONERS:

17. Learned counsel for the respondents/writ petitioners submitted that the delay and laches cannot be put against them as it is one's entitlement of pension and similarly placed persons were given the relief. There are numerous orders passed as confirmed by the Hon'ble Apex Court. The order passed in their favour has been given effect to. Specific direction was issued to implement the same. Rule 11 has been interpreted by the Courts already. Much reliance has been made on the Division Bench judgment of this Court 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, wherein the scope and ambit of the Tamil Nadu Village Servants Service Rules were considered and it has been held that the post held by them was permanent. The law, which has been settled long time back, shall not be unsettled. The decision of the Hon'ble Full Bench of this Court, referred above, does not apply to the cases on hand. In support of the contentions, learned counsels have made reliance upon numerous judgements, which are reproduced hereunder:-

(i) ***K.Rajendran and others v. State of Tamil Nadu and others [1982 AIR 1107.***

(ii) ***M.Annai Muthu v. State of Tamil Nadu, Rep. by the Secretary to Government, Revenue Department and others [W.P.Nos.276 to 280 of 2009 and W.P.Nos.287 to 293 of 2009, dated 09.01.2009].***

(iii) ***P.Subramanian v. State of Tamil Nadu, Rep. by the Secretary to Government, Revenue Department and others [W.P.No.8318 of 2011, dated 27.07.2011].***

(iv) ***S.S.Kaliabiran v. the Government of Tamil Nadu, Rep. by the Secretary to Government, Finance Department and others [W.P.(MD) No.515 and 1072 of 2012, dated 21.02.2014].***

(v) ***K.Alagarsamy and others v. The Government of Tamil Nadu, Rep. by its Secretary, Rural Development Department and others [W.P.Nos.***

W.A.(MD)Nos.1629 of 2018, 167, 213, 507 to 509 of 2019, 789, 876, 910, 1006, 1178, 1190, 1227 to 1231, 831, 849, 1159 to 1165, 1191, 1192, 1257, 1282 to 1295 of 2020 and 198 and 199, 127 to 129, 339 to 344 & 387 of 2021

7217 of 2015 etc., batch, dated 02.08.2017].

(vi) D.Ambalagan v. The Secretary to Government, Revenue Department and others [W.P.No.10252 of 2012, dated 16.11.2017].

(vii) M.Paranthaman v. The State of Tamil Nadu, rep. by its Principal Secretary to Government, Revenue Department and others [W.P.(MD) Nos.19807 to 19809 of 2014, dated 22.01.2018].

(viii) M.Jayaraman v. The Principal Secretary to Government, Revenue Department and others [W.P.(MD) No.2408 of 2018, dated 09.03.2018].

(ix) V.S.Deivasigamani v. The Principal Secretary to Government, Revenue Department and others [W.P.(MD) Nos.2968 and 2969 of 2018, dated 15.03.2018].

(x) R.Samayakaruppa Pillai v. The State of Tamil Nadu, Rep. by its Principal Secretary to Government, Revenue Department and others [W.P.(MD) Nos.14376 to 14379 of 2014, dated 27.03.2018].

(xi) S.Ambikapathy v. The State of Tamil Nadu, Rep. by its Principal Secretary to Government, Revenue Department and others [W.P.(MD) Nos.5771 to 5779 of 2015, dated 27.03.2018].

(xii) Government of Tamil Nadu v. K.Sakthivel [2018 (1) CWC 689].

(xiii) *The State of Tamil Nadu, Rep. by its Secretary, School Education Department and others v. C.Jayarani Gnanadevi [W.A.(MD) No. 844 of 2018, dated 03.07.2018].*

(xiv) *The State of Tamil Nadu, Rep. by its Principal Secretary to Government, Revenue Department and others v. M.Paranthaman [W.A.(MD) Nos.1065 to 1067 of 2018, dated 17.09.2018].*

(xv) *C.Selvamani v. The State of Tamil Nadu, Rep. by its Principal Secretary to Government, Revenue Department and others [W.P.(MD) No. 2483 of 2015, dated 12.12.2018].*

(xvi) *D.A.Ramar v. The State of Tamil Nadu, Rep. by its Principal Secretary to Government, Revenue Department and others [W.P.(MD) Nos. 20146 to 20149 of 2014, dated 22.01.2019].*

(xvii) *The State of Tamil Nadu, Rep. by its Principal Secretary to Government, Revenue Department and others v. D.A. Ramar [W.A.(MD) Nos. 966 to 969 of 2019, dated 24.09.2019].*

(xviii) *The State of Tamil Nadu, Rep. by its Secretary to Department of Revenue and others v. V.Rajagopal and others [W.A.(MD) Nos.973 and 974 of 2019, dated 25.09.2019].*

(xix) *The State of Tamil Nadu, Rep. by its Principal Secretary to*

W.A.(MD)Nos.1629 of 2018, 167, 213, 507 to 509 of 2019, 789, 876, 910, 1006, 1178, 1190, 1227 to 1231, 831, 849, 1159 to 1165, 1191, 1192, 1257, 1282 to 1295 of 2020 and 198 and 199, 127 to 129, 339 to 344 & 387 of 2021

Government, Revenue Department and others v. R.Samayakaruppa Pillai and others [W.A.(MD) Nos.1261 to 1263 of 2019, dated 20.11.2019].

(xx) The State of Tamil Nadu, Rep. by its Principal Secretary to Government, Revenue Department and others v. N.Kottaichamy [W.A.(MD) Nos.183 and 185 of 2020, dated 02.03.2020].

(xxi) Sethurama Pandiyan v. The Secretary to Government, Revenue Department and others [W.P.(MD) Nos.16896 and 16921 of 2018, dated 31.07.2018].

(xxii) K.Mony v. The Accountant General (Accounts and Entitlements) and another [W.P.(MD) No.7370 of 2011, dated 16.08.2018].

(xxiii) N.Krishnan v. The Secretary to Government, Revenue Department and others [W.P.(MD) Nos.23208 to 23219 of 2018 etc., batch, dated 31.01.2019].

(xxiv) The State of Tamil Nadu, Rep. by its Secretary to Government, Department of Revenue and others v. K.Karuthapandi and another [W.A.(MD) Nos.886 to 893 of 2019, dated 04.09.2019].

(xxv) C.Samuthiram v. The Principal Secretary to Government, Revenue Department and others [W.P.(MD) No.19434 of 2019, dated 09.09.2019].

(xxvi) The Government of Tamil Nadu, Rep. by its Secretary to

W.A.(MD)Nos.1629 of 2018, 167, 213, 507 to 509 of 2019, 789, 876, 910, 1006, 1178, 1190, 1227 to 1231, 831, 849, 1159 to 1165, 1191, 1192, 1257, 1282 to 1295 of 2020 and 198 and 199, 127 to 129, 339 to 344 & 387 of 2021

Government, School Education Department and others v. A.Muthuramalingam [W.A. No.3077 of 2019, dated 13.09.2019].

(xxvii) K.Velmayil v. The Secretary to Government, Revenue Department and others [W.A.(MD) No.370 of 2019, dated 22.10.2019].

(xxviii) The State of Tamil Nadu, Rep. by its Secretary, Department of Revenue and others v. Chinna Karuppaiah [W.A.(MD) Nos.1254 & 1255 of 2019, dated 19.11.2019].

(xxix) N.Krishnan v. The Secretary to Government, Revenue Department and others [W.P.(MD) Nos.23208 to 23219 of 2018 etc., batch, dated 10.02.2020].

(xxx) N.Rakkamuthu v. The Principal Secretary to Government, Revenue Department and others [W.P.(MD) Nos.4537 of 2019 etc., batch, dated 10.02.2020].

(xxxi) P.Alagu v. The Principal Secretary to Government, Revenue Department and others [W.P.(MD) Nos.22332 of 2017 etc., batch, dated 10.02.2020].

(xxxii) S.Muthiah v. The Principal Secretary to Government, Revenue Department and others [W.P.(MD) No.7392 of 2020, dated 08.07.2020].

(xxxiii) E.Arumugam and others v. The Principal Secretary to

W.A.(MD)Nos.1629 of 2018, 167, 213, 507 to 509 of 2019, 789, 876, 910, 1006, 1178, 1190, 1227 to 1231, 831, 849, 1159 to 1165, 1191, 1192, 1257, 1282 to 1295 of 2020 and 198 and 199, 127 to 129, 339 to 344 & 387 of 2021

Government, Revenue Department and others [W.P.(MD) No.14677 of 2019, dated 10.07.2020].

(xxxiv) R.Ramaiah v. The Principal Secretary to Government, Revenue Department and others [W.P.(MD) Nos.3319 and 20411 of 2019, dated 10.07.2020] and

(xxxv) The Secretary to Government and others v. K.Velmayil [S.L.P. (C) No.19157 of 2020, dated 20.11.2020].

These decisions includes few rendered by one of us (MMSJ) as well.

DISCUSSION:

18.We have already took note of the relevant Rules. A perusal of the Tamil Nadu Village Servants Conduct Rules, 1983, clearly states the status and position of Writ Petitioners. Certainly, they come under the definition 'Village Assistants'. However, Rule 3, which facilitate a Village Servant to take job of part-time work or occupation, makes it abundantly clear that he is only a part-time Government Servant. Similarly, Rule 14 of Tamil Nadu Village Servants Service Rules, 1980, which gives a succour to a part-time Government servant, as that of the respondents, gives a specific compensation. A conjoint reading of the aforesaid Rules would show that a Village Servant/Assistant was having a part- time service alone.

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 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.

20. Much reliance has been made to Rule 11(a) read with Rule 2(o) of the Tamil Nadu Pension Rules, 1978. These Rules are not applicable to the services of Talaiyaris, being in non-pensionable establishment and part-time and that too not in a cadre post. As per Rule 11(4), there must be whole-time employment. Similarly, there shall not be any break, which is in existence. Insofar as the other set of employees are concerned, viz., Village Officers (Karnams), we may appropriately quote Rule 16 of the Tamil Nadu Village Servants Service Rules, 1980. Even as per Rule 16 of the said Rules, the post of Talaiyari being non-pensionable, they are not entitled.

21. We are quite convinced with the entitlement of the respondents in the light of the discussions made. Our above said conclusion is also strengthened by the judgment of the Full Bench of this Court in ***Government of Tamil Nadu and others v. R.Kaliyamoorthy*** reported in **2019(6) CTC 705**, which could be seen through the following paragraphs:-

“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 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 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 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