

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

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.02.2021, 11.02.2021, 16.02.2021 & 19.02.2021	Delivered on : 26.02.2021
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CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

AND

THE HONOURABLE MRS.JUSTICE S.ANANTHI

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, 1257, 1282 to 1295 of 2020 and 198 and 199, 127 to 129, 339 to 344 & 387 of 2021

and

C.M.P.(MD)Nos.11859 of 2018, 1382, 1801, 4354 to 4356 of 2019, 4482, 4810, 4950, 5480, 6406, 6470, 6833, 6837 & 6839, 6843 & 6844, 6846 & 6847, 6851 & 6852, nil, 4717, 7166, 7361, 7358 & 7362, 7363 & 7364, 7365 & 7366, 7367 & 7368, 7370 & 7371, 7372 & 7373, 7375 & 7376, 7377 & 7378, 7379 & 7380, 7381 & 7382, 7383 & 7384, 7385 & 7386, 7387 & 7388 of 2020, 616, 617, 360 & 361, 364 & 365, 367, 1154, 311 & 312, 318 & 320, 1172 & 388, 1173 & 1174, 1175 & 11761 & 1390 of 2021

W.A.(MD)No.1629 of 2018:- सत्यमेव जयते

- 1.The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Revenue Department,
Secretariat,
Chennai – 600 009.
- 2.The Additional Chief Secretary and Commissioner
of Revenue Administration,
Ezhilagam, Chepauk,
Chennai – 600 005.

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

3.The District Collector,
Virudhunagar District,
Virudhunagar.

... Appellants/Respondents

Vs.

E.Balachandran

... Respondent/Petitioner

Prayer : Appeal filed under Clause 15 of the Letters Patent Act against the order passed by this Court in W.P.(MD)No.14377 of 2014, dated 27.03.2018.

For Appellants : Mr.Sricharan Rengarajan
Additional Advocate General
Assisted by
Mr.K.P.Krishnadoss
Special Government Pleader

For Respondent : Mr.S.Visvalingam

COMMON JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J)

In these batch of Writ Appeals, we are concerned with the issue of entitlement of 50% of the service rendered prior to the change of status as Full Time Government Servants, insofar as Village Headman/தலைமாரி. and recruitment made afresh for erstwhile Karnam (Village Officers) appointed on a hereditary basis.

2.This Court in a catena of judgments held that 50% service rendered

as part time employees without a cadre post can still be counted in accordance with the rules. Some of the decisions rendered, placing reliance upon the earlier decisions, attained finality with the dismissal of the Special Leave Petitions and thereafter due implementations made.

3. There are two different types of Government servants in these batch of Writ Appeals. In one set of cases, qua village headmen, they were employed earlier on a part time basis not borne on a cadre post and the second set of cases involve Village Karnams appointed afresh by going through the process of selection through the rules framed, while the earlier one was hereditary without any qualification prescribed.

4. Before considering the issues raised in these Writ Appeals, let us have a fresh look at the facts along with the provisions governing the posts.

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

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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 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. सत्यमेव जयते

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.

8. These persons were admittedly not given pension in tune with Rule 11 of the Tamil Nadu Pension Rules, 1978 on two grounds viz., the same is not applicable to them and they are having separate set of rules. Writ Petitions have been filed in most of the cases and after few decades of their superannuation, the Writ Petitions were accordingly, allowed.

9. The second set of cases involve the Village Officers, viz., Karnams. These persons were originally made as such, by way of hereditary rights for life. Therefore, neither there was any qualification involved nor it is based upon any tenure. An ordinance was passed, which was replaced by the enactment called “The Tamil Nadu Abolition of the Posts of Part-Time Village Officers Act, 1981 (Act, 3 of 1991)”. Accordingly, the part-time Village Officers as aforesaid were relieved in pursuant to the abolition. A challenge was made before the Hon'ble Apex Court. The challenge was repelled by the Apex Court in **K.Rajendran &**

Ors. v. State of Tamil Nadu reported in **1982 AIR 1107** with the following directions:-

“(i) The State Government will give effect to the memorandum filed on its behalf which is incorporated in this judgment in the case of those who possess the minimum general qualifications prescribed under the Act and the Rules made thereunder and who were holding the posts of part-time village officers immediately before the Act came into force. The State Government shall re-employ all such persons who have not crossed the age of superannuation and who are selected as per the memorandum in the new cadre within four months from today. Until they are so selected, they will not be paid any remuneration. Even if they are re-employed, the amount paid to them pursuant to the interim orders will not be recovered from them.

(ii) The compensation, if any, payable by the State Government under section 5 of the Act to those who cease to be village officers shall be adjusted against the amount paid pursuant to the interim orders passed in these cases. The State Government will not recover from them any amount paid to them pursuant to the interim orders passed in these cases in excess of the compensation, if any, payable to them.

(iii) The interim orders stand vacated with effect from April 15, 1982.”

Thereafter, the Committee went into the matter and gave re-employment to such

of those, who are qualified. Even this set of employees, though retired, again approached this Court, seeking counting of 50% of the services rendered in the erstwhile post of Village Karnam, placing reliance on Rule 11 of Tamil Nadu Pension Rules, 1978. Once again, after decades of their reaching the age of superannuation, they are also accordingly, allowed. As in the other cases, the issue involved attained finality, given effect to in certain cases.

Provisions:

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.

Note. - In the case of the employees of the former Pudukkottai State and persons transferred from the former Travancore-Cochin State consequent on the reorganisation of States, temporary or officiating service rendered in a regular capacity under the former Pudukkottai State or the former Travancore-Cochin State shall count in full for purposes of pension.

Provided that -

(a) in the case of a Government servant, service rendered before attaining the age of eighteen years shall not count, except for compensation gratuity;

(b) in the case of a Government servant whose year and month of birth are known, but not the exact date the 16th of the month should be treated as the date of birth. When the year of birth is known but not the month and date 1st July of the year shall be taken.

(c) in the case of a Government servant with no military service who gives on recruitment only his age, but not the year of his

birth, the year should be arrived at by deducting from the year of recruitment the given age and then the date of birth should be taken as the 1st July of that year:

Provided further that in the case of a Government servant with previous military service the date of birth is fixed as laid down below -

When a military employee is transferred to a civil department under the Government and assumes a civilian status, the date of birth to be entered in his service book should be the date stated by him at the time of attestation.

When the documents referring to the previous military service of an individual do not give the definite date of birth but only the age stated at the time of attestation, he should be assumed to have completed the stated age on the date of attestation e.g., if ex-soldier was enrolled on 1st January 1910 and if on that date, his age was stated to be 18, his date of birth should be taken as 1st January 1892. This procedure will apply to cases arising on or after 27th June 1938.

Notwithstanding anything contained above, in cases where S.S.L.C or any other school certificate is available, the date of birth, as entered therein should be taken into account.

[*Explanation.* - For the purpose of date of birth, the word "attestation" refers only to the initial records kept by the Defence Department at the time of appointment of the individual and not in the discharge from the discharge the Defence Department.]

[(2) Half of the service paid from contingencies shall be allowed to count towards qualifying service for pension along with regular service subject to the following conditions:-

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

(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.

(iii) Service shall be for which the payment is made out on monthly or daily rates computed and paid on a monthly basis and which, though not analogous to the regular scale of pay, shall bear some relation in the matter of pay to those being paid for similar jobs being performed by staff in regular establishments.

(iv) Service paid from contingencies shall be continuous and followed by absorption in regular employment without a break.

(v) Subject to the above conditions being fulfilled, the weightage for past service paid from contingencies shall be limited to the period after the 1st January 1961 for which authentic records of service may be available.

(vi) Pension or revised pension admissible as the case shall be paid from the 23rd June, 1988.]

[(3) Half of the service rendered by a Government servant under non-pensionable establishment shall be counted for retirement

benefits along with regular service under pensionable establishment subject to the following conditions:-

(i) Service under non-pensionable establishment shall be in a job involving whole time employment.

(ii) Service under non-pensionable establishment shall be on time scale of pay and

(iii) Service under non-pensionable establishment shall be continuous and followed by absorption in pensionable establishment without a break.

Provided that in respect of those who retired prior to the 14th February, 1996, the retirement benefit or revised retirement benefit, as the case may be, admissible to them shall be paid from the 14th February, 1996 and there shall be no claim for arrears in any case, for the period up to the 13th February, 1996.]

[(4) Half of the service rendered under the State Government in non-provincialised service, consolidated pay, honorarium or daily wages basis on or after 1st January 1961 in respect of Government employees absorbed in regular service before 1st April 2003 shall be counted for retirement benefits along with regular service, subject to the following conditions, namely:-

(i) Service rendered in non-provincialised service, consolidated pay, honorarium or daily wages basis shall be in a job involving whole time employment;

(ii) Service rendered shall be on consolidated pay, honorarium or daily wages basis paid on monthly basis and subsequently absorbed in regular service under the State Government;

(iii) Service rendered in non-provincialised service, consolidated pay, honorarium or daily wages basis shall be followed by absorption in regular service before 1st April 2003 without a break.

Provided that this sub-rule is applicable to all employees who rendered service under the State Government in non-provincialised service, consolidated pay, honorarium or daily wages basis on or after 1st January 1961 and absorbed in regular service before 1st April 2003.

Provided further that wherever there was break in service before their absorption in regular service before 1st April 2003, the same shall be specifically condoned by the orders of the Head of Departments, in which the employees were regularly absorbed and such period of break, shall not count for the purpose of pensionary benefits.]”

Under sub-rule 2 of Rule 11, the employment will have to be whole time and not part time and the post will have to be regular and sanctioned one. As per sub-rule (3), services under non-pensionable establishment must be in job involving whole time employment and at a time scale of pay, without any break prior to absorption. Similar conditions are also imposed under sub-rule (4). Thus, the aforesaid Rule abundantly makes it clear that half of the services under a non-pensionable establishment can only be reckoned, when there is a full time employment in a cadre post, fixed time scale of pay and without any break prior to absorption. Therefore, there are two issues, which are required to

be taken note of, viz., the nature of employment and an existence of permanent post on a regular time scale of pay.

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).

Explanation. - For the purpose of this rule,-

(a) Where the total service,-

(i) includes a period which is a portion of a year; or

(ii) is a period less than a year, the amount payable for the period referred to in sub-clause (i) or (ii), as the,

case may be, shall be an amount bearing to the amount payable for one year of total service, the same portion as the said period bears to a period of one year of total service;

(b) "monthly emoluments" shall mean-

(i) Honorarium;

(ii) Panchayat Development Allowance, which were payable to the part-time Village Servant for the whole of the calendar month immediately proceeding the date of his retirement, and

(iii) an amount equal to one-twelfth of the consolidated annual travelling allowance for the year ending with the 31st March of the year of retirement:

Provided that where the part-time Village Servant was on leave other than casual leave or was absent without authorisation, or was under suspension, during the whole or part of the month proceeding his retirement, the monthly emoluments shall mean,-

(i) Honorarium; and

(ii) Panchayat Development Allowance, which would have been payable to him for the whole of the said month preceding his retirement, but for such leave, absence or suspension; and

(iii) an amount equal to one twelfth of the consolidated annual travelling allowance for the year ending with the 31st March of the year of retirement;

(c) "total service" shall not include any period during which a part-time Village Servant was-

- (i) on leave other than casual leave, or
- (ii) absent without authorisation, or
- (iii) under suspension.”

Rule 16 of the Tamil Nadu Village Servants Service Rules, 1980, again reiterates the position that the service rendered as Talaiyari is not pensionable. The following is the said Rule:-

“16.Fundamental Rules and the Tamil Nadu Leave Rules, 1978 etc., not to apply.--

- (1) The provisions of the Fundamental Rules and the Tamil Nadu Leave Rules, 1978, shall not apply to the Village Servants.
- (2) The posts are non-pensionable.”

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

These Rules deal with the conduct of the Village Servants, being part-time 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