
(2009) 01 MAD CK 0197

In the Madras High Court

Case No : Writ Petition No"s. 276 to 280 of 2009 and W.P. No"s. 287 to 293 of 2009

M. Annai Muthu

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 09-01-2009

Acts Referred:

Constitution of India, 1950 — Article 32

Tamil Nadu Pension Rules, 1978 — Rule 24, 25, 3

Tamil Nadu State and Subordinate Services Rules, 1955 — Rule 10

Citation : (2009) 01 MAD CK 0197

Hon'ble Judges : V. Ramasubramanian, J

Bench : Single Bench

Advocate : M. Ravi, for the Appellant; S. Litta Srinivasan, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

V. Ramasubramanian, J.—The petitioners in all these writ petitions were originally employed as ""Village Officers"", in various categories such

as Munsifs, Karnams etc. These part time posts were abolished with effect from 14.11.1980 and a new category of full time Government Servants

known as ""Village Administrative Officers"" was created in 1982. The petitioners, who lost their part time employment, consequent on the abolition,

were appointed to the newly created post and all of them have now retired on reaching the age of superannuation.

2. They have now come up with the present batch of writ petitions seeking a Mandamus to the respondents to refix their pension and retirement

benefits by taking into account, the services rendered from the date of their first appointment in the erstwhile post.

3. I have heard Mr. M. Ravi, learned Counsel appearing for the petitioners in all these writ petitions, Mrs. Litta Srinivasan, learned Government

Advocate took notice for the respondents.

4. The claim now made by the petitioners, has a historical background. But before advertng to the same, it is necessary to reduce into a nutshell,

the details of employment of the petitioners, for a better understanding of the claim made by them. These details are presented in a tabular form, for

easy appreciation, as follows:

W.P. No.	Petitioner Name	Period of service rendered before appointment	Date of fresh retirement	Date of
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14.11.1980	as after abolition			
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Karnam etc.	of old post			
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276/2009	M. Annai Muthu	From 26.8.1968 to		
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14.11.1980	as			
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Karnam	(12 years)			
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From 1.1.1991	to			
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31.7.1997	as			
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Panchayat Clerk.	10/8/98	31/12/2001		
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277/2009	P.K. Kandasamy	From 2.2.1973 to 24.12.1990	as 31/12/2001	
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14.11.1980	(7 VAO			
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years)				
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278/2009	S. Sengottaiyan	From 30.3.1979 to 23.9.1991	as 30/06/2008	
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14.11.1980	(1 VAO			
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year)				
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279/2009	N. Kolandavelu	From		
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16.09.1974	to			
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14.11.1980 (6
years) 7/16/98 30/09/2003

280/2009 K. Thiyagarajan 7.7.1969 to 14.11
1980 (11 years) 7/16/98 26/4/2002

287/2009 S. Arumugam From 24.7.1975 to
14.11.1980 (5
years) 8/4/82 30/04/2004

288/2009 R. Murugesan From 24.2.1975 to
14.11.1980 (5
years) 8/9/82 31/01/2007

289/2009 M. Palaniappan From 9.4.1976 to
14.11.1980 (4
years) 8/9/82 30/06/2006

290/2009 R. Ponnusamy From 14.10.1977 to
14.11.1980 (3
years) 8/9/82 31/07/2004

291/2009 M. Chidambaram From 21.4.1978 to
14.11.1980 (2
years) 8/10/82 30/06/2004

292/2009 R. Rajamanise- From 11.9.1973 to
karan 14.11.1980 (7
years) 8/30/82 31/10/2006

293/2009 R. Subbaiyan From 7.6.1974 to
14.11.1980 (6
years) 8/9/82 31/08/2007

5. As seen from the above tabular form, all the writ petitioners except a few, have rendered sufficient service to earn a reasonable amount of pension, even in the newly created post. Three of them have rendered less than 10 years of service in the newly created post, which by itself will not entitle them to any pension. This is why they have come up with the present writ petitions for combining two services viz., (i) the services rendered as Village Officers before abolition on 14.11.1980 and (ii) the services rendered as Village Administrative Officers after fresh recruitment to the newly created category, after 1982.

HISTORICAL BACKGROUND:

6. Coming to the historical background, the posts of Village Headman or Munsif, Village Accountant or Karnam and Village Watchman, which were part time posts and hereditary in nature, were abolished by the Government of Tamil Nadu by an Ordinance issued on 13.11.1980, known as Tamil Nadu Abolition of Posts of Part Time Village Officers Ordinance 1980. It was subsequently replaced by Tamil Nadu Act 3 of 1981. A

total of about 23,010 posts of Village Officers stood abolished by the Ordinance.

7. The Ordinance and the Act were challenged under Article 32 of the Constitution before the Supreme Court. In the course of hearing of the writ

petitions by the Supreme Court, a Memorandum was filed on behalf of the State Government, to the effect that all erstwhile Village Officers who

possessed minimum general educational qualifications (a pass in SSLC) as required by the Abolition Act, will be screened by a Committee and

appointed to the newly created post of Village Administrative Officer, irrespective of their age, but subject to their not having crossed the age of

retirement. The Government also undertook not to make those persons subject to any test by the Public Service Commission, but to appoint them

subject only to their physical fitness and any punishment undergone in the erstwhile post. After recording the aforesaid undertaking given by the

Government and issuing certain directions, the Supreme Court upheld the

abolition and dismissed the writ petitions, as seen from its decision reported in K. Rajendran and Others Vs. State of Tamil Nadu and Others, .

8. Pursuant to the above, all erstwhile Village Officers who possessed minimum general educational qualifications as on the date of abolition and who had not crossed the age of superannuation, were screened by a Committee and were appointed on various dates in the year 1982. A direct recruitment through the Tamil Nadu Public Service Commission from the open market, followed in 1984 and in so far as they are concerned, the question on hand is of no relevance, since they were appointed subject to an upper age limit on the date of appointment and subject to statutory rules.

9. After rehabilitating the first set of candidates who possessed minimum general educational qualifications as on the date of abolition, in the year 1982 itself, the Government decided to rehabilitate another group of candidates, who acquired minimum general educational qualification, subsequent to 20.2.1982. Therefore an order was issued in G.O.Ms. No. 1287, Revenue Department, dated 6.7.1988. In pursuance of the said Government Order, many persons who lost their employment consequent upon the abolition and who acquired minimum general educational qualification after 1982, also got appointed, though temporarily under Rule 10(a) (i) of the General Rules for Tamil Nadu State and Subordinate Services.

10. Many of them who got appointed through the Screening Committees in 1982 and many of them who got appointed temporarily after 1988 (in pursuance of G.O.Ms. No. 1287), retired from service in the newly created full time post of Village Administrative Officer, even without completing 10 years of service. The Tamil Nadu Pension Rules prescribed a qualifying service of 10 years for a person to be eligible at least for minimum pension. Therefore these persons became statutorily disentitled to any pension, leading to a cry.

11. Considering their plight, the Government came up with an order in G.O.Ms. No. 756, Revenue Department dated 17.8.1993. The operative portion of the said Government Order, in paragraph-3, when translated, would read as follows:

It is hereby ordered that for those who lost their employment on 14.11.1980 and

who got appointed as Village Administrative Officers on the basis of eligibility, but who retired without completing 10 years of service, their period of service shall be counted from 14.11.1980, the date on which they lost their employment, instead of from the date of joining service as Village Administrative Officers and they may be granted minimum pension accordingly.

12. In the meantime, an association of erstwhile Village Officers, who could not get rehabilitated, filed an application before the Tamil Nadu

Administrative Tribunal, seeking pensionary benefits. Though their original application was dismissed, a review application was allowed. When the

appeal filed by the Government as against the order of the Tribunal was pending in the Supreme Court, the Government issued G.O.Ms. No. 828,

Revenue Department, dated 23.8.1996, sanctioning a minimum pension of Rs. 175/- per month together with attendant benefits, to the erstwhile

Village Officers who lost their jobs on 14.11.1980, but who were alive. Similarly, a family pension of Rs. 100/- per month was sanctioned to the

family of the deceased erstwhile Village Officers, who lost their jobs on 14.11.1980. Though the said Government Order was passed only in

1996, the minimum pension and family pension sanctioned thereunder were to be with effect from 5.12.1986.

13. In the meantime, some of the erstwhile Village Officers who lost their jobs on 14.11.1980 and who did not possess the minimum general

educational qualification on the date of abolition and who also did not acquire the qualification after 1982, were also rehabilitated, by being

appointed as Panchayat Assistants. These Panchayat Assistants were also granted the benefit of the minimum pension sanctioned under G.O.Ms.

No. 828, by virtue of a clarification issued by the Government on 25.2.1997.

14. Even after counting the services from the date of abolition viz., 14.11.1980, some of the Village Administrative Officers did not become eligible

for the grant of pensionary benefits sanctioned under G.O.Ms. No. 756, Revenue, dated 17.8.1993, since they got appointed after 1982 but

retired before 1990 (before completing 10 years from 14.11.80). Therefore another order was issued in G.O.Ms. No. 1036, Revenue, dated

4.11.1997, whose operative portion reads as follows:

3. Accordingly, the Government direct that pensionary benefits ordered in

G.O.Ms. No. 828, Revenue, dated 23.8.1996 be extended to the Ex.

Village Officers who lost their jobs on 14.11.1980 and subsequently appointed as Village Administrative Officers based on the memorandum

submitted by the State Government before the Supreme Court but retired without completing the qualifying service of 10 years for getting minimum pension.

4. The Government also direct that the said category of Ex. Village Officers are eligible for pension sanctioned in paragraph-3 above, with effect

from 5.12.1986, excluding for the period they worked as Village Administrative Officers.

15. Later, the minimum pension of Rs. 175/- per month and family pension of Rs. 100/- per month sanctioned under G.O.Ms. No. 828, Revenue,

dated 23.8.1996, was enhanced to Rs. 250/- and Rs. 150/- respectively, under G.O.Ms. No. 629, Revenue, dated 22.7.1998. But the benefits of

these orders were not available to the erstwhile Village Officers who were either on leave or on suspension, on the date of abolition. Therefore the

Government issued an order in G.O.Ms. No. 753, Revenue, dated 9.9.1998, directing that the benefits of minimum pension and family pension

sanctioned in G.O.Ms. No. 828, Revenue, dated 23.8.1996 and G.O.Ms. No. 629, Revenue, dated 22.7.1998 be extended to the Ex. Village

Officers who were on leave/suspension as on 14.11.1980, the date of abolition.

16. Subsequently, a question arose as to whether the Ex. Village Officers who lost their jobs on 14.11.1980 and who got appointed temporarily

after 1988 by acquiring the minimum general educational qualification subsequent to the date of abolition, would also be entitled to count their

services (for the purpose of grant of minimum pension) from 14.11.1980, as ordered in G.O.Ms. No. 756, Revenue, dated 17.8.1993. This

question was answered in G.O.Ms. No. 875, Revenue Department, dated 29.10.1998, as follows:

3. The Government examined the points raised by the Deputy Accountant General in paragraph-2 above. They issue the following clarifications:

(i) The Ex-Village Officers whose posts were abolished on 14.11.1980 but possessed the educational qualification only after 20.2.1982 were

appointed as Village Administrative Officer on 10(a)(i) basis as per G.O.Ms. No. 1287, Revenue, dated 6.7.1988. They are not eligible to receive

the benefit provided in G.O.Ms. No. 756, Revenue, dated 17.8.1993, which is applicable only to Village Administrative Officers who were having minimum general educational qualification on 14.11.1980 and were appointed through Screening Committee. Persons appointed under 10(a)(i) are eligible for person only after completing 10 years qualifying service from the date of appointments as Village Administrative Officers as per Tamil Nadu Pension Rules.

(ii) Persons appointed by Screening Committee were those who possessed minimum general educational qualification (S.S.L.C. passed) even before 14.11.1980 (i.e.) at the time of abolition of the part time posts of Village Officers and appointed as per judgment of Supreme Court. But the persons appointed under Rule 10(a)(i) of the General Rules are those Ex. Village Officers who did not possess minimum general educational qualification at the time of abolition (i.e.) 14.11.1980 but obtained the educational qualification, subsequently to 20.2.1982. They had to register their names after qualifying themselves in the District Employment Exchange which would sponsor their names for the purpose of appointment under Rule 10(a)(i) whenever the Collector calls for names to fill up the vacancies for the post of Village Administrative Officers.

(iii) The Village Administrative Officers appointed temporarily as per G.O.Ms. No. 1287, Revenue, dated 6.7.1988 under Rule 10(a)(i) of the General Rule after 1988 are eligible to at minimum pension as per pension rules only after completion of 10 years of qualifying service from the date of appointment till the date of superannuation.

(iv) In respect of the Ex-Village Officers appointed as Village Administrative Officers by the Screening Committee, and retired without completing the period of 10 years of qualifying service, minimum pension only may be sanctioned to them with reference to G.O.(Ms) No. 756, Revenue, dated 17.8.1993 by calculating the period from 14.11.1980 till the date of their retirement instead of computing the date on which they had been re-appointed as Village Administrative Officers. But they are not eligible for commutation of pension.

17. However, by an order in G.O.Ms. No. 121, Revenue, dated 13.3.2001, the Ex. Village Officers who lost their jobs on 14.11.1980 and who got appointed temporarily after 1988 by acquiring the minimum general

educational qualification subsequent to the date of abolition, but who retired without completing the qualifying service of 10 years, were granted the benefit of special pension originally ordered to the Ex-Officers who lost their jobs and who never got re-employment. Paragraphs-7 and 8 of the said order read as follows:

7. The Government have after careful consideration of the request of the Retired Village Administrative Officers and the recommendation of the

Principal Commissioner and Commissioner of Revenue Administration, direct that the pensionary benefits ordered in G.O.(Ms) No. 828,

Revenue, dated 23.8.1996 and enhanced in G.O.(Ms) No. 629, Revenue, dated 22.7.1998 be extended to the Ex-Village Officers who lost their

jobs on 14.11.1980 and who did not possess minimum general educational qualification at the time of abolition of the posts of Village Officers

(i.e.) 14.11.1980, but obtained the educational qualification, subsequent to 20.2.1982 and appointed as Village Administrative Officers under Rule

10(a)(i) basis with reference to G.O.(Ms) No. 1287, Revenue, dated 6.7.1988 and retired without completing 10 years of qualifying service.

8. The Government also direct that the said category of Ex-Village Officers are eligible for pension sanctioned in paragraph-3 above, with effect

from 5.12.1986, excluding for the period they worked as Village Administrative Officers.

18. To summarise, the vexed question of grant of pension for the services rendered by the erstwhile Village Officers has undergone a

metamorphosis over the past three decades and step by step the Government have yielded to the demand, categorywise as follows:

(a) FOR THOSE WHO NEVER GOT RE-EMPLOYED:

A special pension of Rs. 175/- per month later enhanced to Rs. 250/- per month with attendant benefits to all those living Ex-Village Officers, who

lost their jobs on 14.11.1980 but who never got re-employed was first sanctioned with effect from 5.12.1986. For the families of those who were

dead, a special family pension of Rs. 100/- per month later enhanced to Rs. 150/- per month, was similarly sanctioned.

(b) FOR THOSE WHO GOT RE-EMPLOYED IN 1982:

For persons who lost their jobs on 14.11.1980 and who were appointed as Village Administrative Officers in the year 1982, by virtue of

possessing minimum general educational qualification, but who retired without completing 10 years of service in the new category, their services

were directed to be counted not from the date of their appointment in 1982 but directed to be counted with effect from 14.11.1980, so that they

get 10 years of qualifying service in the new category to get at least minimum pension.

If these persons did not get 10 years of service, even after counting the service from 14.11.1980, then they were directed to be granted the special

pension as per G.O.Ms. No. 828, Revenue, dated 23.8.1996, with effect from 5.12.1986, but excluding the period of their non-employment.

(c) FOR THOSE WHO GOT RE-EMPLOYED AFTER 1988:

Persons who lost their jobs on 14.11.1980 and who got appointed temporarily under Rule 10(a)(i) after 1988, by virtue of acquiring minimum

general educational qualifications after the date of abolition, the special pension granted to those who were never re-employed, was granted with

effect from 5.12.1986, excluding the period of their re-employment on temporary basis.

PRESENT CLAIM OF THE PETITIONERS:

19. The historical background narrated above would show that the erstwhile post of Village Officers (Karnam, Munsif etc.) was in non-

pensionable service and was part time. But the newly created post of Village Administrative Officer is in pensionable service and is full time. It has

actually been included as one of the categories of posts in the Tamil Nadu Ministerial Service. The Tamil Nadu Pension Rules which govern the

issue of grant of pension, do not provide for clubbing a non-pensionable service and a pensionable service together for the purpose of counting the

qualifying service. Rule 3(o) of the Tamil Nadu Pension Rules, defines the expression "qualifying service" as follows:

(o) "qualifying service" means permanent or officiating service (including temporary service under emergency provisions) rendered in a post

included in a pensionable establishment.

20. It is only on account of the difficulty posed by the above definition, coupled with the fact that the abolished post was not in a pensionable

establishment that the Government had to pass a series of orders granting some benefits such as special pension etc. All the Government Orders

narrated in the previous part of this judgment, were issued in recognition of the statutory provision that the services rendered in a non-pensionable establishment (as Village Officer) prior to abolition cannot be clubbed together with the services rendered in the pensionable establishment in the newly created category. Therefore it is too late in the day to make a claim for clubbing both services together, when thousands of employees have been granted other benefits, in confirmation of the fact that the rules do not provide for clubbing both service together.

21. As stated earlier, there is no provision in the Tamil Nadu Pension Rules, for counting the services rendered by the petitioners in an establishment that was not pensionable. On the contrary, the definition of the expression "qualifying service" in the said Rules makes it clear that the services rendered in a post in a pensionable establishment alone is to be taken as qualifying service for the purpose of grant of pension. Therefore a writ of mandamus as prayed for, contrary to statutory rules cannot be granted.

22. It is true that in the Public Works Department, a part of the services rendered by persons in the Contingent Establishment, were directed to be counted along with the services rendered in the regular establishment, after they were brought into regular establishment, for the purpose of grant of pension. But persons in Contingent Establishment were placed on a different footing than the erstwhile Village Officers. Therefore the Government exercised its powers and granted the said benefit. However it is not for this Court to issue a similar direction, especially in view of the fact that a spate of orders had already been passed by the Government, with regard to those who were re-employed in the newly created category and who retired before completing 10 years of service.

23. There is yet another fallacy in the claim of the petitioners. They have prayed not merely for clubbing both services together but actually for counting even the period of break in service. To recapitulate, the prayer of the petitioners is to count their services from the date of their appointment in the erstwhile abolished post of Village Officers upto the date of their retirement in the newly created post. As seen from the tabular form given above, all the petitioners lost their jobs on 14.11.1980, the date of abolition of the post. They were re-employed after a break in service, ranging from 2 to 11 years. The petitioners have prayed for counting the

services rendered in the abolished post along with the period of break in service (of about 2 to 11 years) and the period of their re-employment. Rules 24 and 25 of the Tamil Nadu Pension Rules, which speak about the effect of interruption in service and provide for condonation of interruption, is not applicable to the petitioners, in respect of the break that they had. This is in view of the fact that the erstwhile post was not in a pensionable establishment. Therefore viewed from any angle, the claim of the petitioners cannot be sustained.

24. In view of the above, all the writ petitions are dismissed, in so far as the claim of the petitioners for counting their services from the date of their appointment in the erstwhile post of Village Officer is concerned. However, it is made clear that a few of the petitioners who have retired in the newly created post without completing 10 years of service, are entitled to the benefits of the other Government Orders listed out in the previous part of this order. No costs.