

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:17.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR. JUSTICE N.AUTHINATHAN

Writ Petition No.25983 of 2015

1. S.Balasubramani
2. T.Kandavelu
3. S.Ezhaimuthu
4. S.Nilankanni
5. A.Padmanabhan
6. C.Kalyani
7. S.Kesavan
8. S.Thulukkanam
9. P.Periyandavan
10. A.Dhanam
11. I.Parvathi
12. R.Chandira
13. P.Parisatham
14. K.Padmanabhan
15. D.Kantha
16. E.Gowri
17. S.Lakshmi @ Jayalakshmi
18. M.Ilayaperumal
19. K.Kumari
20. R.Subramanian
21. Valarmathy
22. B.Selvi
23. A.Ganasegaran
24. S.Kuppammal @ Sundari

... Petitioners

v.

1. The Secretary to Government,
Union of India,
Agricultural Department,
Government of Union Territory of Puducherry,
Puducherry.
2. The Director of Agriculture,
Government of Union Territory of Puducherry,
Puducherry.

3. The Principal,
Krishi Vigyan Kendra,
Government of Union Territory of Puducherry,
Puducherry.
4. Pondicherry Krishi Vigyan Kendra Society,
Kurumbapet,
Government of Union Territory of Puducherry,
Puducherry.
5. The Registrar,
Tamil Nadu Agricultural University,
Coimbatore-3.
6. The Registrar,
Central Administrative Tribunal,
Additional Bench at Chennai,
Chennai 600 104. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus, to call for the records, on the file of the 6th respondent, relating to impugned order, dated 03.06.2015 in O.A.No.1049 of 2013, quash the same and consequently, allow the O.A.No.1049 of 2013, on the file of the sixth respondent.

For petitioner : Mr.D.Bharath Chakravarthy

For respondents
1 to 4 : Mr.Syed Mustafa,
Special Government Pleader (Pondy)

For 5th Respondent : Mr.Abdul Saleem

O R D E R

(Order of the Court was made by S.MANIKUMAR, J.)

Challenge in this petition is to an order of the Central Administrative Tribunal, Madras, in O.A.No.1049 of 2013, dated 03.06.2015, by which, the Tribunal has dismissed the Original Application, seeking for a direction to respondents 1 to 3 herein, to grant the benefit of pension to the petitioners, under the General Pension Scheme and to deduct subscription, on par with the other government employees, on the basis of the past service, rendered by the petitioners, with all consequential benefits.

2. Brief facts leading to the writ petition are that originally, the petitioners were appointed by the Tamil Nadu

Agricultural University, Coimbatore, 5th respondent herein, to work in Pondicherry Krishi Vigyan Kendra, with all benefits, due to the Government Servants of Tamil Nadu, around the year 1974-75 and they were regularised in the year 1988-89. While so, in the year 1992, vide G.O.Ms.No.217, dated 27.04.1992, Pondicherry Krishi Vigyan Kendra was taken over by the Union Territory of Puducherry, along with the employees and all activities, including the Centre.

3. Thereafter, the Secretary to THE Government, Union of India, Agricultural Department, Government of Union Territory of Puducherry, Puducherry, 1st respondent herein, have issued G.O.Ms.No.14, dated 01.11.1994, stating that a Society will be formed for running the Krishi Vigyan Kendra at Puducherry. Thereafter, Pondicherry Krishi Vigyan Kendra Society was formed. In the Memorandum of Association formed by the Pondicherry Krishi Vigyan Kendra Society, Puducherry, 4th respondent herein, it was categorically mentioned in Clause No.33 that the Society will frame rules for absorption of the staff recruited by the previous management of the institution, prior to formation of society and bring them under regular establishment, subject to the fulfillment of such rules and regulations as may be prescribed by the Governing Body in this regard.

4. However, the 4th respondent-society has not framed the rules to absorb the petitioners. As a matter of fact, the petitioners have obtained the minutes of the meetings of the Board of the 4th respondent, from its 1st meeting on 30.06.1994 to its 26th meeting on 24.05.2012 and found that absolutely no rules whatsoever have been framed to absorb the petitioners herein. As such, the petitioners were never absorbed in the 4th respondent society and continued to be government servants, under the Agricultural Department, Government of Union Territory of Puducherry.

5. The petitioners have further submitted that they were entitled for Pension, under General Pension Scheme, under the original appointment made by the Tamil Nadu Agricultural University, Coimbatore, 5th respondent herein. However, the employees, who were recruited by the 4th respondent- society, are not the government servants and they were servants of the society. Since the petitioners were absorbed into the Government of Union Territory of Puducherry, all matters, including pay fixation, are done under the Service Rules, applicable to the government servants of Puducherry. Even pension rules are also applicable to the petitioners.

6. According to the petitioners, employees of the society are entitled to bonus and other special benefits, which are conferred by the various societies, from time to time, whereas

they are not given bonus. They were paid only festival advance, as that of government servants and therefore, they are entitled to all retiral benefits, including pension under the general pension scheme.

7. The petitioners have further submitted that in respect of Mazdoors, Mr.G.Jaganathan and Mrs.Savithiri, the respondents did not pay pension and their matter were kept under cold storage. While so, many of the petitioners are to reach Superannuation and that there is absolute confusion and vaccum, relating to their status and in spite of the representation of the petitioners, through the Association, the respondents 1 and 2 have not taken steps to include the petitioners, in the general pension scheme and enable them to draw pension in the event of their superannuation.

8. In a similar situation, relating to absorption of the project employees, under the District Rural Development Agency, the Central Administrative Tribunal, Chennai, vide order, dated 31.07.2009, made in O.A.No.813 of 2007, held that once the employees are absorbed, they are entitled to pension. As a matter of fact, the Government of Puducherry have complied with the said order, by issuing G.O.Ms.No.15, dated 18.03.2010 and thereafter, the said employees were paid pension. According to the petitioners, they are similarly situated persons, absorbed by the Government of Puducherry and continued to be government servants, under the Government of Puducherry and that therefore, entitled to pension. In spite of repeated representations, no action whatsoever has been taken by the respondents 1 & 2 and hence, they have filed O.A.No.1049 of 2013, for grant of the relief of pension.

9. Before the Tribunal, the respondents 1 to 3 have filed a reply, stating that Krishi Vigyan Kendra, Pondicherry, was established in the year 1974, under the control of Tamil Nadu Agricultural University, Coimbatore and the same was taken over by the Government of Pondicherry, only with effect from 01.04.1992 and subsequently, started to function as a registered society from 30.05.1994 onwards. The said Kendra engaged the employees by the authority of Tamil Nadu Agricultural University, based on the approval obtained from the Government of Puducherry, exclusively to work in Krishi Vigyan Kendra, Pondicherry, with an instruction that payment on time scale to the above Mazdoors and Demonstration Assistants, will not confer any right to claim absorption in Government Department, in future, if there would be a decision to wind up the said Kendra.

10. The respondents 1 to 3 have further submitted that the employees of Krishi Vigyan Kendra, are covered under the EPF Scheme and the society has been contributing its share, under

the above scheme, in the light of the decision taken in the General Body Meeting, held on 10.07.1995. The governing body also has resolved to pay retirement gratuity / DCRG and payment of lumpsum cash equivalent to the unutilised Earned Leave to the retired / families of the deceased employees, subject to the fulfillment of the rules.

11. The respondents 1 to 3 before the Tribunal have further submitted that EPF scheme has been introduced in the Society, on a policy decision, taken by the Government of Puducherry and that the arrears of employer's share has also been paid from August, 1982. All the activities of the society, including the introduction of EPF scheme, instead of GPF/CPF, payment of arrears of contribution, have been done, after obtaining prior approval of the Government.

12. Before the Tribunal, Tamil Nadu Agricultural University, 5th respondent herein, has filed a primary reply, stating that they are not falling within the jurisdiction of the Tribunal. After considering the facts and circumstances of the case, the Central Administrative Tribunal, by order, dated 03.06.2015, made in O.A.No.1049 of 2013, held as follows:

"The applicants claim is that they were originally appointed by the 5th respondent namely the Tamil Nadu Agricultural University around the year 1988 in pensionable service. However the only appointment order submitted by the applicants relate to the appointment of the second applicant namely P.Kandavelu by memorandum No. KVK/Pondy/Labour/Posts/Memorandum/88, dated 06.04.1988 appointing him as temporary Mazdoor in Krishi Vigyan Kendra, Pondicherry. In the above offer of appointment it had been made clear that the said temporary appointment would not confer any right on the appointee for the claim for absorption in Government department in future if it was decided to wind up the Krishi Vigyan Kendra. Such being the terms appointment, we find that the claim of the applicant that all the applicants were originally appointed by the 5th respondent in pensionable service is not true on the face of the records. However the management of the Krishi Vigyan Kendra was taken over by the Union Territory of Pondicherry, w.e.f. 01.04.1992 and its management was entrusted to the Krishi Vigyan Kendra Society registered under the Societies Registration Act, 1860 by order, dated 01.11.1994. As per the policy decision taken by the Government of Puducherry, the employees of the Society were covered under the EPF Scheme and the Society has been making contribution under the

Scheme from the year 1994 onwards. The respondents have also produced the orders relating to absorption of Mazdoors and staff under the services of the society based on their willingness for such absorption and all the other records produced by the respondents go to show that all the employees who were employed in the Krishi Vigyan Kendra under the management of the society have been extended the benefits and they were covered under the EPF Scheme. We find from the reply that employees who had already superannuated are getting the EPF Pension from the Office of the Assistant Provident Fund Commissioner, Puducherry. There is nothing on record to distinguish the applicants in the present OA from the other employees of the Krishi Vigyan Kendra and their contention that they were originally recruited under pensionable service under the Tamil Nadu Agricultural University has turned out to be an unsubstantiated claim and 5th respondent namely Tamil Nadu Agricultural University has also prayed for dismissal of the OA. In the light of the above position, we find that the contentions raised in the OA are devoid of merit and the OA is liable to be dismissed. Accordingly the OA is dismissed".

13. Aggrieved against the said order, the present writ petition has been filed, on the following grounds:

(A) The finding of the Tribunal that the petitioners were not under pensionable service, under the fifth respondent- University is incorrect, on the basis of the following :

(i) Though the petitioners were initially engaged as temporary servants during 1977-78, their services were regularized in the year 1988.

(ii) Offer of Appointment to one of the petitioners, produced in Annexure-II in the Original Application, reveals that it is a regular appointment and merely because, the word "temporary" is used, it does not mean that the petitioners were temporary servants;

(iii) It is an admitted fact that the petitioners were regularly employed under pensionable service and the same is not denied by the respondents;

(B) The finding of the Tribunal, as if, willingness were obtained from the petitioners and they were absorbed into the society and included in the Provident Fund Scheme, is totally contrary to the materials available on record and on a perusal of the entire materials produced before the Tribunal, no such

exercise of absorption or willingness given by the petitioners took place and as such, the finding of the Tribunal is perverse.

(C) The Tribunal ought to have seen that the respondents 1 & 2 have not taken the administrative steps to include the petitioners, under the general pension scheme, on the erroneous premise that the petitioners are not government servants;

(D) Even though respondents 1 and 2 have constituted the 4th respondent-society for running the Pondicherry Krishi Vigyan Kendra, no rules have to be framed for absorption of the petitioners into the 4th respondent-society, as per the Memorandum of Association. Several other societies, such as, the Veterinary College Society have framed rules, including payment of pension and other benefits. There is an administrative inaction on the part of the 4th respondent-society, for the past 20 years and that the petitioners cannot be denied the benefits of pension, under the general pension scheme, available to the government employees;

(E) Judgment of the Tribunal in O.A.No.813 of 2007 in respect of DRDA employees is applicable to them in all force and that the respondents are liable to pay pension to them petitioners. Respondents 1 & 2 ought to have seen that by virtue of G.O.Ms.No.10, dated 27.04.1992, the petitioners stood absorbed under the Government of Puducherry from the 5th respondent herein and as a matter of fact, the Government of Puducherry had received all the contribution and other amounts deducted from the petitioners till date of absorption in the year 1992 and that the Government of Puducherry cannot now deny the benefit of pension to the petitioners;

(F) At no point of time, the petitioners were put on notice that they would not be entitled to pension and on the other hand, were being granted all the benefits, including pay fixation under the Fundamental Rules. Bonus and other benefits, which are normally given to the Society employees, were not given to the petitioners, because they were treated as government servants and therefore, the respondents cannot take a different stand, in the matter of grant of pension under the general pension scheme alone."

14. Respondents 1 to 3 have filed a detailed counter affidavit, contending inter alia that when the Government of Puducherry had taken decision to transfer the activities of the scheme, under a registered body, in the name of "Pondicherry Krishi Vigyan Kendra Society'" w.e.f 30.05.1994, it was decided

to adopt Employees' Provident Fund Scheme and Employees Deposit Linked Insurance Scheme for the employees of the said society towards payment of terminal benefits and other concession extended under the scheme. As per the letter, dated 11.01.1995, the Regional Commissioner, Employees' Provident Fund Organization, Madras the employees were enrolled as members of the schemes, with effect from 01.08.1982 and payment was made out of the contribution recovered from the employees and employer, including arrears of payment were duly made till date. As per the scheme, the following provisions are made:-

Sl . No .	Name of the Scheme	Contribution		Refund Available	Conces sion Extend ed
1	Employee's Provident Fund Scheme	12% on Basic Pay (Pay Band Grade Pay) + DA + Sp. Allowanc es	The Employer share will be the actual amount equal to Employees contribution towards Provident Fund or the share of Employer contribution restricted to 12%	The Employees Contribution	--
2	Employee's Deposit Linked Insurance scheme	--	The employer contributes premium for all the employees on roll and pay Rs.10 Lakhs per year	In case of dead of the employees Rs.3.60 lakhs payable to the spouse or children of the deceased employees	--

15. The respondents 1 to 3 have further contended that the petitioners have disclaimed the Employees Provident Fund (Miscellaneous Provision) Act, 1952 and insisted for General Provident Fund scheme and Pension scheme followed in Government. According to the respondents, the petitioner and others have impliedly agreed to govern themselves under the Employees' Provident Fund (Miscellaneous) Provision Act, 1952 and they were negating after lapse of 23 years and most of the petitioners had already retired on superannuation, obtaining pension under the scheme of Employees' Provident Fund (Miscellaneous) Provision Act, 1952 and any change in the service benefits would dismantle the entire functioning of the labour welfare measures followed in the Society.

16. The respondents 1 to 3 have further submitted that the Central Administrative Tribunal has rightly observed that employees who had already superannuated are getting the EPF pension from the Office of the Assistant Provident Fund Commissioner, Puducherry and there was nothing on record to distinguish the petitioners from the other employees of the Krishi Vigyan Kendra. Even the retired employees have obtained their share from Employees' Contribution of Provident Fund with admissible interest along with a part of share from Employer's Contribution of Provident Fund with admissible interest from the Employees Provident Fund Organization and also enrolled themselves under the Employees Provident Pension scheme. On retirement, the employer and employees relationship ceases and hence the retired employees could be eligible pension, under the Employees Provident Fund Scheme only.

17. According to respondents 1 to 3, the employees are provided bonus on par with Government servants, following the Government Order, issued by Government of Puducherry for Non-productivity Linked Bonus to remunerate the employees of Kendra for their service rendered and that the petitioners could not claim bonus, on par with the workmen of industrial establishment, Krishi Vigyan Kendra is only a service provider to farmers for their welfare and upliftment. Hence, for the above reasons, the respondents have prayed for dismissal of the writ petition.

Heard the learned counsel for the parties and perused the materials available on record.

18. Government of India has sanctioned the scheme of Krishi Vigyan Kendra Scheme with a mandate to impart training farmers, farm women and unemployed youths on scientific method of agricultural and improved practice of agriculture in Puducherry region, during the year 1974, through Indian Council of Agricultural Research, New Delhi, as its Head Office and was under the control of Tamil Nadu Agricultural University, Coimbatore, upto 31.03.1992.

19. Government of Puducherry entrusted the Krishi Vigyan Kendra Scheme to the Directorate of Agriculture for implementation in Puducherry. The Management of the said scheme was given to Tamil Nadu Agricultural University, a pioneer in the field of agricultural for better management of the scheme. Thereafter, Krishi Vigyan Kendra was taken over by the Government of Puducherry, with effect from 1992 and subsequently, started to function as a registered society from 30.05.1994 onwards.

20. Kendra engaged the employees, by the authority of Tamil Nadu Agricultural University, based on the approval obtained from the Government of Puducherry exclusively to work in Krishi Vigyan Kendra, Puducherry, with instruction that payment of time scale to the petitioners (viz., Mazdoors and Demonstration Assistants) will not confer on them any claim for absorption in Government Department in future, if it is decided to wind up krishi Vigyan kendra. Thereafter, Krishi Vigyan Kendra Society was registered under the Societies Registration Act, 1860, with effect from 01.11.1994.

21. A Hon'ble Full Bench of this Court in K.Marappan v. The Deputy Registrar of Co-operative Societies and another, reported in 2006 (4) CTC 689, held that a writ petition as against a Co-operative Society is not maintainable.

22. First of all, Krishi Vigyan Kendra Society is a registered society, under the Societies Registration Act, 1860 and hence, the present writ petition, filed against the society, is not maintainable.

23. Secondly, the said Kendra engaged the employees by the authority of Tamil Nadu Agricultural University, based on the approval obtained from Government of Puducherry, exclusively to work in Krishi Vigyan Kendra, Pondicherry, with an instruction that payment on time scale to the above Mazdoors and Demonstration Assistants, will not confer any right to claim absorption in Government Department, in future, if there would be a decision to wind up the said Kendra. However, the management of the Krishi Vigyan Kendra was taken over by the Union Territory of Pondicherry, with effect from 01.04.1992 and its management was entrusted to Krishi Vigyan Kendra Society, registered under the Societies Registration Act, 1860, vide order, dated 01.11.1994. Such being the position, it cannot be contended that the petitioners were originally appointed by the Tamil Nadu Agricultural University in a pensionable service and that and that the conferment of pay scale would not confer any right to grant the benefit of pension to the petitioners, under the General Pension Scheme and also to count past service.

24. The petitioners cannot claim the benefit of pension under the General Provident Fund, after the lapse of 23 years, by way of filing the Original Application, in the year 2013. Some of the petitioners had already retired on superannuation and obtaining pension under the scheme of Employees' Provident Fund (Miscellaneous) Provision Act, 1952. Even though there is no rule, absorbing the petitioners in the society, the same would confer them the status of government servant.

25. Some of the petitioners have been promoted in the society and they are the employees of the registered society, by which, they are entitled to claim benefit only under the Employees' Provident Fund Scheme and not under the General Provident Fund. Merely because, the petitioners were absorbed from Tamil Nadu Agricultural University, they cannot claim any privilege, as government servants.

In the result, we find no reason to interfere with the order of the Central Administrative Tribunal. Accordingly, the writ petition fails and the same is dismissed. No order as to costs.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

skm

To

1. The Secretary to Government,
Union of India,
Agricultural Department,
Government of Union Territory of Puducherry,
Puducherry.
2. The Director of Agriculture,
Government of Union Territory of Puducherry,
Puducherry.
3. The Principal,
Krishi Vigyan Kendra,
Government of Union Territory of Puducherry,
Puducherry.
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Kurumbapet,
Government of Union Territory of Puducherry,
Puducherry.

5. The Registrar,
Tamil Nadu Agricultural University,
Coimbatore-3.

6. The Registrar,
Central Administrative Tribunal,
Additional Bench at Chennai,
Chennai 600 104.

+1 cc to M/s.Abdul Saleem, Advocate, S.R.No.3808

+1 cc to M/s.Sai Bharath & Ilan, Advocate, S.R.No.3457

+1 cc to Government Pleader for Puducherry, SR No.3899

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GP (CO)
SSM(07/03/2019)



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