IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 27.01.2021

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.No.24951 of 2008

1. S.Krishnan (Deceased)

2.K.Sugirdham
3.K.Velmurugan
4.Thilagavathy
5.K.Ramesh
6.K.Natanasigamani ... Petitioners
[Petitioners 2 to 6 are substituted as LRs of the deceased Petitioner as per order dt:20.07.2018 in M.P.No.1 of 2015]

Vs.

1. Government of Tamil Nadu
   Represented by its Secretary,
   Agriculture Department,
   Fort St. George, Chennai - 600 009.

2. The Director,
   Agriculture Department,
   Chepauk, Chennai 600 005.

3. The Joint Director,
   Agriculture Department,
   Villupuram - 605 602.

4. The Commissioner of Agriculture,
   Chepauk, Chennai - 600 005.

5. The Principal Accountant General (A and E),
   Office At DMS Compound, Teynampet,
   Chennai - 600 018.

[R4 and R5 impleaded vide order dt. 24.09.2020 made in WMP.No.24089 of 2018] ... Respondents

Prayer : Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Mandamus directing the respondents to sanction pension to the petitioner for his services rendered under the respondents as Office Assistant from

January 2003 to May 2007, in addition to his services rendered in Tamil Nadu Co-operative Oil-seeds Growers Federation Ltd., from 1985 to 2002.

For Petitioner : Mrs.S.Girija

For Respondents : Mr.K.Magesh
Special Government Pleader

ORDER

The prayer sought for in this writ petition is to issue a writ of mandamus directing the respondents to sanction pension to the petitioner for his services rendered under the respondents as Office Assistant from January 2003 to May 2007, in addition to his services rendered in Tamil Nadu Co-operative Oil-seeds Growers Federation Ltd., from 1985 to 2002.

2.The original petitioner one S.Krishnan was the employee of the Tamil Nadu Co-operative Oil-seeds Growers Federation Limited (in short 'TANCOF').

3.Since the said TANCOF was decided to be closed by the policy decision of the Government, the employees, who were working in the TANCOF in the year 2002, were transferred for continuous employment at the Government Department i.e., the Agriculture Department, Government of Tamil Nadu, the respondents herein.

4.In this context, G.O.Ms.No.142 dated 04.06.2002 of Agriculture Department was issued, by and which, such transfers of various positions had been made.

5.After having been transferred to the State Agriculture Department from TANCOF, the original petitioner was working for 4 1/2 years and on reaching superannuation, he retired from service on 31.05.2007.

6.After the original petitioner retired as such, since he was not paid the regular pension, it seems to have been given a representation dated 23.07.2008 to the respondents seeking for a regular pension and the same since has not been considered by the respondents, the present writ petition has been filed with the aforesaid prayer.

7.Mrs.S.Girija, learned counsel appearing for the petitioners, would submit that, though the original petitioner worked only for 4 1/2 years after transferred to the present Department from TANCOF before his superannuation and the said period may not be eligible for getting the regular pension since the minimum service is required under Pension Scheme for Government Servants to get pension is 10 years, the earlier service rendered by the original petitioner at TANCOF should be treated as a pensionable service, out of which, 50% of the service shall be taken into account for the purpose of calculating the pension and accordingly, pension shall be calculated and be paid to the original petitioner. Since the said action has not been initiated and the erstwhile service rendered by the original petitioner in the respondent Department since was not considered for the purpose of pensionable benefits, the petitioner, having failed in his attempt to get orders on his representation dated 23.07.2008 as the same was not considered by the respondents, filed the present writ petition, therefore, the learned counsel for the petitioners seeks indulgence of this Court.

8.The learned counsel appearing for the petitioners also relied upon a decision of learned Judge made in W.P.Nos.2623, 3355, 3356 of 2014 dated 10.11.2017, whereby, the learned Judge of this Court, having considered a similar issue of erstwhile TANCOF staff for getting pension, had directed the Government to treat 50% of the service rendered by employees at TANCOF for the purpose of pensionable benefits and therefore, based on such calculation, the erstwhile TANCOF staff, who had subsequently been transferred to the Department, i.e., Agriculture Department, shall be entitled to get the regular pensionable benefits.

9.By relying upon the said judgment, the learned counsel appearing for the petitioners would contend that, the similar relief as the one has been given to other erstwhile employees of TANCOF shall also be extended to the petitioners.

10.However, Mr.K.Magesh, learned Special Government Pleader appearing for the respondents, by relying upon the counter affidavit as well as the relevant G.O.Ms.142 dated 04.06.2002, would submit that, none of the TANCOF staff, who had been subsequently transferred to State Government, would be entitled to get regular pension and in this context, the learned Special Government Pleader relied upon various conditions imposed in G.O.Ms.No.142 at para 5, which reads thus:

> "5.Government have examined the above proposal carefully and have decided transfer the Area Agronomic Centre and Training Centre at Neyveli, the Area Of Tiruvannamalai, Virudhachalam, Neyveli, Cheyyar, Madurai, Erode and Tirunelveli the 151 staff attached to these units to the control of the Commissioner of Agriculture subject to maintaining a separate identity. Government accordingly pass the following

orders:-
(i) The Centrally Sponsored Schemes and State Schemes and production, distribution of seeds and other related functions now performed by TANCOF shall be transferred to the Commissioner of Agriculture with immediate effect.
(ii) The Area Agronomic Centre & Training Centre at Neyveli and the Area Officer, Tiruvannamalai, Cheyyar, Vridhachalam, Madurai, Erode and Tirunelveli for the posts attached to it and all infrastructure available shall be transferred to control of Commissioner of Agriculture.
(iii) The following categories of post of TANCOF along with incumbents as detailed the annexure to this order shall be absorbed in the Department of Agriculture subject to maintaining a separate identity by creating equal number of posts relaxing the ban orders for creation of new posts issued in G.O.Ms.No... Finance Department, dated 23.11.2001.

S.No.	Post in TANCOF	No. of Post
1	Deputy General Manager	1
2	Area Manager	4
3	Production Officer	9
4	Office Superintendent	7
5	Extension Assistant	53
6	Assistant	34
7	Junior Assistant	11
8	Typist/Steno-typist	5
9	Driver	9
10	Cleaner	1
11	Office Assistant	8
12	Watchman	9
	Total	151

(iv) The employees, so absorbed shall be treated as Government Servants from the date of issue of this Order.
(v) The pay of all concerned shall be protected.
(vi) The leave earned in TANCOF shall be transferred to the Department of Agriculture.
(vii) The employer's contribution towards Employees Provident Fund with interest shall be credited into Government account.
(viii) The Employees contribution shall be transferred

to General Provident Fund account (to be opened).
(ix) The Group Insurance amount, if any, shall be credited into Government account
(x) The gratuity amount for the period rendered in TANCOF shall be credited into Government accountant
(xi) The employees inducted by transfer from TANCOF will not be eligible for regular pension scheme for Government Servants, but they will be covered under the Contributory Pension Scheme that is being worked out by the Government of India."

11.Accordingly, the learned Special Government Pleader for the respondents would submit that, since the original petitioner also had been transferred only under G.O.Ms.No.142 and thereafter, he worked in the Department only for 4 1/2 years and he retired from service on 31.07.2007, he was not having the full pensionable service or atleast the minimum pensionable service of 10 years, therefore, he is not entitled to any pensionable benefits as he claimed in this writ petition.

12.The learned Special Government Pleader would also contend that, insofar as the judgment relied upon by the learned counsel appearing for the petitioners in W.P.No.2623 of 2014 etc. dated 10.11.2017 is concerned, as against the said decision, the respondents filed writ appeal in W.A.No.3046 of 2019 and the said appeal since is pending till date, the said judgment of the learned Judge cannot be relied upon, hence, the learned Special Government Pleader contended that, the original petitioner is not entitled to get any regular pensionable benefits. However, he would further add that, whatever the benefits accrued on the original petitioner, pursuant to G.O.Ms.No.142, he was entitled to and if the same is not calculated and paid either to the original petitioner i.e. erstwhile employee or the present petitioners, who are the legal heirs of the petitioner, the same shall be calculated and would be paid within a shortest possible time that may be fixed by this Court, he contended.

13.I have considered those rival submissions made by the learned counsel appearing for both sides and have perused the materials placed before this Court.

14.It is an admitted fact that, the original petitioner was one of the employee of the TANCOF from where he was transferred to the present Department i.e., the respondent Department only under G.O.Ms.No.142, dated 04.06.2002. At the time of transferring this petitioner along with other employees, a set of conditions has been imposed in the said G.O.Ms.No.142, especially Clause 5 of the G.O., which has already been quoted herein above.

15.Sub-clause (iv) of Clause 5 reads that 'The employees, so absorbed shall be treated as Government Servants from the date of issue of this order' that means from the date of issuance of G.O.Ms.No.142, those erstwhile employees of TANCOF since transferred to the Department of the State Government would be treated as Government employees or Government servants, that means, prior to the issuance of G.O.Ms.No.142 i.e., 04.06.2002 they would never be treated as Government Servants.

16.With regard to the service benefits payable to these employees since transferred to the Department, sub-clause (v) to (xi) of Clause 5 of the G.O. speaks about on various measures which have already been quoted. Accordingly, these employees would be entitled to get provident fund, group insurance, gratuity etc.

17.Sub-clause (xi) of Clause 5 of the G.O. is relevant, where, it has been specifically stated that, the employees inducted by transfer from TANCOF will not be eligible for regular pension scheme for Government Servants, but they will be covered under the Contributory Pension Scheme that is being worked out by the Government of India.

18.In this context, it is to be noted that, since the import of G.O.Ms.No.142 dated 04.06.2002 has been accepted by all these employees including the present original petitioner and the adverse conditions i.e., Clause 5 of the G.O. since has not been questioned so far, the law will presume that, what are the conditions imposed in G.O. would be binding these employees including the original petitioner herein.

19.However, it is to be noted that, at the time of issuance of G.O.Ms.No.142 dated 04.06.2002, the Pension Scheme was the Old Pension Scheme and the New Pension Scheme was not brought into force. Therefore, the words used in Sub-clause (xi) of Clause 5 of the G.O. makes it clear that, they will be covered under the Contributory Pension Scheme that is being worked out by the Government of India.

20.In that context, it is to be taken note of that this original petitioner though was transferred in the year 2002 had worked only for less than 5 years as he retired from service on 31.07.2007, till such time, whether the New Pension Scheme that is Contributory Pension Scheme was implemented and if so, any contribution was made by the original petitioner is not known.

21.Be that as it may, insofar as the judgment dated 10.11.2017 made in W.P.No.2623 of 2014 etc. heavily relied upon by the learned counsel appearing for the petitioners is concerned, in that decision the import of G.O.Ms.No.142 has not been considered. However, the learned Judge has directed the respondents therein to calculate atleast half of the service rendered by these employees at TANCOF also along with their regular service from 1.4.2002 for the purpose of grant of pensionable benefits. However, as against the said order, it is brought to the notice of this Court that, intra- Court appeal has been filed by the respondents and the same is pending before this Court.

22.However, the learned counsel appearing for the petitioners has vehemently contended that, atleast two or three of the erstwhile employees of TANCOF, who also did not have the minimum eligible pensionable service after they transferred to Government, were given full pension, of course taking the analogy of calculating 50% of the service they rendered for TANCOF prior to they were brought into the Government pool. In respect of the said submission made by the learned counsel appearing for the petitioners, the learned Special Government Pleader fairly submits that, if at all any decision, the Government has taken by calculating 50% of the service already rendered at TANCOF for the purpose of pensionable benefits, that gesture certainly would be extended to this original petitioner also and those aspects definitely would be taken care of and decided by the respondents on the request made by the original petitioner, which according to the learned counsel appearing for the petitioners, has not so far been disposed of.

23.Considering the aforesaid legal aspects and factual matrix of the case, since the conditions imposed in Clause 5 of G.O.Ms.No.142 will bind both the parties i.e., the original petitioner who was the employee of the Department and the import of the G.O. since has not been questioned, the original petitioner cannot now turn around and say that, he is entitled to get regular pension.

24.However, insofar as the direction issued by the learned Judge of this Court, in the judgment referred to above dated 10.11.2017, when the judgment, despite the same being appealed by way of intra-Court appeal, has been acted upon and 50% of the service rendered by them in the erstwhile TANCOF has been taken into account for the purpose of pensionable benefits and accordingly, such full pension or eligible pension on regular basis for sanction to some erstwhile TANCOF employees are taken place or extended can also be gone into by the respondents while deciding the issue, as has been raised by the petitioner through his representation dated 23.07.2008.

25.In that view of the matter, this Court is inclined to dispose of this writ petition with the following directions:

(i) That the respondents are hereby directed to consider the representation of the petitioner viz., S.Krishnan (since deceased) dated 23.07.2008 and decide the same on merits and in accordance with law.

(ii) While deciding the same, the respondents shall take into account the order passed by the learned Judge i.e., in W.P.No.2623 of 2014 etc. batch dated 10.11.2017 of course subject to the appeal filed by the respondents in this regard and also the fact that at the time of passing of G.O.Ms.No.142 dated 04.06.2002 only the Old Pension Scheme was in force and New Pension Scheme i.e., Contributory Pension Scheme was not introduced and also take into account that, atleast some erstwhile employees of TANCOF was considered for giving regular pension by taking into account their erstwhile service rendered by them in the TANCOF either full service or half service in the respondent Department in the aforesaid writ petition and accordingly, decide the issue as to whether the original petitioner S.Krishnan (since died) is entitled to get whatever the pensionable and retirement benefits and accordingly the same shall be calculated and be paid to the present petitioners, who are the legal heirs of the petitioner i.e., the original petitioner, within a period of three months from the date of receipt of a copy of this order.

26.With these directions, the Writ Petition is disposed of accordingly. No costs.

Sd/-
Assistant Registrar (CS-VI)

// True Copy //

Sub Assistant Registrar

Sgl

To

1. The Secretary,
   Government of Tamil Nadu
   Agriculture Department,
   Fort St. George, Chennai - 600 009.

2. The Director,
   Agriculture Department,
   Chepauk, Chennai 600 005.

3. The Joint Director,
   Agriculture Department,
   Villupuram - 605 602.

4. The Commissioner of Agriculture,
   Chepauk, Chennai - 600 005.

5. The Principal Accountant General (A and E),
   Office At DMS Compound, Teynampet,
   Chennai - 600 018.

+1 CC to Government Pleader SR.No. 4608

LN (CO)
RLP (12.07.2021)