IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14-07-2022

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.29895 of 2014
And
MP No.1 of 2014

1.K.Jayaraman
2.P.Govindasamy
3.M.Padmanaban
4.K.Ranganathan
5.M.Vijayan
6.T.Sivaraj
7.G.A.Subramani .. Petitioners

vs.

1.The State of Tamil Nadu,
Represented by its Agricultural Production Commissioner and Principal Secretary to Government,
Agriculture (OS) Department,
Secretariat,
Fort St. George,
Chennai – 600 009.

2.The State of Tamil Nadu,
Represented by its Secretary to Government,
Finance (Pension) Department,
Fort St. George,
Chennai – 600 009.

3.The Department of Agriculture,
Represented by Commissioner of Agriculture,
Chepauk,
Chennai – 600 005.

4.The Accountant General (Accounts and
Entitlement),
No.361, Anna Salai,
Chennai – 600 018. .. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the first respondent having Ref.No.Lr.No.2569/OS/2014-12, dated 15.10.2014 and quash the same and consequently direct the first respondent to accept the recommendation of the third respondent in his letter dated 31.08.2010 having Ref.No.Na.Ka.Ve.Vi.P/1075/A1/03 and the fourth respondent in its letter dated 23.12.2008 having Ref.No. AG(A&E)/Pen.30/III/08-09/34 and pass a Government Order treating the service rendered by the erstwhile Tamil Nadu Cooperative Oil Seeds Growers Federation Limited employees as qualifying service under Rule 11 of the Tamil Nadu Pension Rules for the purpose of calculation and payment of pension and other retiral benefits to the petitioners from the date of their retirement.

For Petitioners	:	Ms.Nalini Chidambaram, Senior Counsel for Ms.C.Uma.
For Respondents-1 to 3	:	Ms.S.Anitha, Special Government Pleader.
For Respondent-4	:	Mr.S.Mahesh for Mr.V.Vijayshankar.

O R D E R

The order of rejection, rejecting the claim of the writ petitioners for reckoning the period of services rendered by them in the Tamil Nadu Cooperative Oilseeds Growers Federation Ltd [TANCOF] as qualifying services under Rule 11 of the Tamil Nadu Pension Rules, 1978, is under challenge in the present writ petition.

2. The petitioners joined the services of Tamil Nadu Cooperative Marketing Federation Ltd [TANFED], which was subsequently converted as Tamil Nadu Cooperative Oilseeds Growers Federation Ltd [TANCOF]. TANCOF is a Cooperative Society registered under the provisions of the Tamil Nadu Cooperative Societies Act, 1983. In view of the

financial loss occurred in the TANCOF Cooperative Society winding up proceedings were initiated under Section 137 of the Tamil Nadu Cooperative Societies Act, 1983 [hereinafter referred to as the 'Act', in short]. The Government took a policy decision to absorb all the TANCOF employees into the Agriculture Department of the Government of Tamil Nadu. Accordingly, an order was passed in G.O.Ms.No.142, Agriculture Department, dated 04.06.2002.

3. The absorption of employees were made by creating certain posts and by granting pay protection to the employees. The Chairman and Managing Director of TANCOF sent proposals for transfer of the Agriculture Extension Wing of TANCOF along with its staff to the control of the Commissioner of Agriculture. In the proposals, the Managing Director has stated that the Agriculture Extension Wing, which is having 11 cadres comprising both Agriculture Extension Wing with Ministerial staff numbering 151 in six Area Offices and two Units in Neyveli viz., Area Agronomic Centre and Training Centre, is implementing the Centrally Sponsored Schemes and State Schemes in its Project Districts and involved

in seed production and distribution to the member of the oilseeds growers societies and to Department of Agriculture and has requested that the staff attached to the above mentioned Units may be transferred to the control of the Commissioner of Agriculture in the equivalent posts. The equivalent posts also identified and accordingly, all those employees, including the petitioners, were transferred to the Department of Agriculture under the control of the Commissioner of Agriculture. Accordingly, 151 staff, attached to these Units under the control of the Commissioner of Agriculture, were absorbed subject to maintaining separate identity. The Government accordingly passed the following orders:-

> *"(i) The Centrally Sponsored Schemes and State Schemes and production and 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 and Training Centre at Neyveli and the Area Offices at Tiruvannamalai, Cheyyar, Virudhachalam, Madurai, Erode and Tirunelveli with all the posts attached to it and all infrastructure available shall*

be transferred to the control of Commissioner of Agriculture.

(iii) The following categories of post of TANCOF along with incumbents as detailed in 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 by relaxing the ban orders for creation of new posts issued in G.O.Ms.No.463, 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.	Calendar	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 account.

(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."

4. Pertinently Clause (iv) stipulates that the employees so

absorbed shall be treated as Government Servants from the date of issue of this order. Several representations were submitted by the petitioners to count the period of services rendered by them in the TANCOF for the purpose of reckoning the qualifying services for grant of terminal and pensionary benefits. The said representations were turned down by stating that the services rendered by the writ petitioners in the TANCOF was non-pensionable services and therefore, they are not entitled for reckoning the said services as qualifying services under the Tamil Nadu Pension Rules.

5. The learned Senior Counsel, appearing on behalf of the writ petitioners, reiterated that the Government in such circumstances granted the benefit of counting of services in many other Departments. As far as the TANCOF is concerned, the writ petitioners were working as full time employees in the regular time scale of pay. The Government Order also amended and G.O.Ms.No.310 dated 23.11.2005 was issued. Accordingly, the services of the writ petitioners were brought under the Old Pension Scheme i.e., Tamil Nadu Pension Rules, 1978 and the date of regular appointment as Government Servants was granted to these petitioners with

effect from 01.04.2002. When the benefit of Old Pension Rules are granted in favour of the writ petitioners, the services rendered by them in the TANCOF also to be reckoned as qualifying services for the purpose of pension.

6. The learned Special Government Pleader, appearing on behalf of the respondents 1 to 3, objected the contentions raised on behalf of the petitioners by stating that the Government has considered the case of the writ petitioners and rejected the same on the ground that the services of the writ petitioners in the TANCOF was non-pensionable service.

7. The learned counsel appearing on behalf of the Accountant General of Tamil Nadu relying on the counter made a submission that as per the Government Order issued in G.O.Ms.No.142, Agriculture (OS) Department, dated 04.06.2002, the petitioners were treated as Government Servants only from the date of issuance of the order and the petitioners have not contributed for pension while they were serving in TANCOF. In other words, Pension Contributions were not made by the TANCOF since it was a

Cooperative Society registered under the provisions of the Tamil Nadu Cooperative Societies Act, 1983.

8. That apart, the Principal Accountant General of Tamil Nadu sought for certain clarifications from the Government for the purpose of counting the services of these writ petitioners rendered in TANCOF. The Government replied by stating that the services rendered by them in TANCOF cannot be taken into consideration for the purpose of grant of pension and therefore, the Principal Accountant General also is not in a position to consider the case of the writ petitioners.

9. This Court is of the considered opinion that admittedly the writ petitioners were appointed originally in TANFED, which was renamed as TANCOF. TANCOF is a Cooperative Society registered under the provisions of the Tamil Nadu Cooperative Societies Act, 1983. The service conditions of the employees of the Cooperative Societies are governed under Rule 149 of the Tamil Nadu Cooperative Rules and the Special Bye-Laws enacted by the respective Management of the Cooperative Societies

concerned, which is to be approved by the Competent Authorities under the Act. Thus, the service conditions of the employees working in a Cooperative Society is entirely different and as it was not a Government Department.

10. In the present case, TANCOF was owned by the Government of Tamil Nadu and the Cooperative Society suffered huge financial loss and a decision was taken to wind up the Society and at that point of time, the Government has decided to absorb these employees in Government Department.

11. This Court is of the considered opinion that the absorption of the Cooperative Society employees in the Government is different. The concession extended to those employees. When these employees were not appointed in the Government Department as per the Service Rules and they were recruited in a Cooperative Society under the provisions of the Act, the Transfer of services from the Cooperative Society to Government Department was a concession extended by the Government and accordingly certain conditions were imposed while issuing the orders. As per the order,

pay drawn by those employees were protected, the leave benefits also were granted. All other benefits due to them were also accepted by the Government. However, the non-pensionable services rendered by these petitioners in the TANCOF were not taken into consideration for the purpose of reckoning the qualifying services for the grant of pensionary benefits under the Tamil Nadu Pension Rules, 1978.

12. This Court is of the considered opinion that transfer of these employees from TANCOF to Government Department is a policy decision taken by the Government. At the time of such absorption/transfer, terms and conditions were imposed. Thus, the claim of the writ petitioners to reckon the services rendered by them in TANCOF as qualifying services under the Tamil Nadu Pension Rules, is to be considered by the Government by taking note of the long services rendered by these employees in the TANCOF. However, the Court cannot interfere or impose any additional condition in respect of such policy decisions taken by the Government in view of the fact that the service conditions of those employees in TANCOF were protected by the Government while transferring these employees.

13. The present claim of the writ petitioners are the additional benefits sought for to count the services as qualifying services. Such an additional benefit, which is otherwise not granted in the policy, cannot be added by the Court by exercising the powers of judicial review under Article 226 of the Constitution of India. The Courts can examine/test the validity of the conditions imposed while absorbing these employees. However, this Court cannot add any new condition or term which is otherwise not contemplated under the policy of the Government. In the event of such exercise, it would fall beyond the scope of the powers of judicial review. Thus, any further concessions or benefits, if at all to be granted, the petitioners have to approach the Government for the purpose of passing appropriate orders.

14. The learned Senior Counsel appearing on behalf of the petitioners further made a submission that the petitioners have already made several representations. Under these circumstances, the respondents are at liberty to consider the same by taking note of various mitigating factors

regarding the loss occurred to the TANCOF and absorption of these employees into Government Service.

15. With the abovesaid liberty, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

14-07-2022

Index : Yes
Internet : Yes
Speaking Order
Svn

To

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and Principal Secretary to Government,
State of Tamil Nadu,
Agriculture (OS) Department,
Secretariat,
Fort St. George,
Chennai – 600 009.

2.The Secretary to Government,
State of Tamil Nadu,
Finance (Pension) Department,
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3.The Commissioner of Agriculture,
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S.M.SUBRAMANIAM, J.

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