

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.10.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.8109 of 2020

and

W.M.P(MD)Nos.7527, 7528 of 2020

& 13107 of 2021

1.R.Alagesan
2.A.Velsami

... Petitioners

Vs

1.The State represented by
The Secretary to Government,
Agricultural Production Commissioner,
Agriculture Department,
St.George Fort,
Chennai – 9.

2.The Commissioner of Agriculture /
Registrar,
Agro Engineering Service,
Chepauk,
Chennai – 5.

3.The Secretary,
Labour and Employment Department,
Fort St.George,
Chennai.

4.The Chief Engineer (AE),
Agricultural Engineering Department,
Nandanam,
Chennai – 600 035.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records related to the impugned order of the first respondent in Letter No. 1355/AE-2/2019-15, Dated 14.01.2020 and quash the same and consequently directing the respondents to treat the service of the petitioners in AGROFED from 1990 to 2017 as service under the respondents 1 to 4 for the Notional fixation of the salary till 2017 and to refix the seniority of the petitioner from the initial date of appointment with continuity of service and with all monetary benefits as a servant of the respondents 1 to 4 and also include the name of the petitioner under the old pension scheme and to pass orders in the light of the order of the Honourable Supreme Court in S.L.P.No: 12121/2011 dated 11.05.2016 with interest.

For Petitioners : Mr.Sricharan Rangarajan
for M/s. Veera Associates

For Respondents : Mr.R.Baskaran
Additional Advocate General
Assisted by
Mr.J.K.Jayaseelan
Government Advocate

ORDER

Heard the learned counsel appearing for the writ petitioner and the learned Additional Advocate General assisted by the learned Government Advocate appearing for the respondents.

2. The writ petitioners were appointed as Block Managers in Tamil Nadu Agro Engineering and Service Co-operative Federation (AGROFED) Limited in the year 1990. AGROFED was started by the Government of Tamil Nadu as a Co-operative Society in the year 2002. The said Society was wound up in the year 2004. The employees of AGROFED were ordered to be retrenched after following the appropriate procedure.

3. The writ petitioners herein contended that they should be absorbed in some Government Department. They pointed out the cases of one C.Ganesan, S.Ramasamy and M.Ravi. C.Ganesan and S.Ramasamy had been deployed in Animal Husbandry and Fisheries Department even before formal winding up of AGROFED. Thiru M.Ravi was appointed in the Municipal Administration and Water Supply Department as Junior Engineer vide G.O(Ms)No.211 Municipal Administration and Water Supply, dated 15.11.2007. Since the petitioners' request was not accepted, they filed W.P.Nos.9614 & 9615 of 2006 seeking redeployment. They had also challenged the Government Order, whereby, compensation packages were ordered. Both the writ petitions were disposed of vide order dated 11.09.2007 with a direction to the Government to consider their representations. Pursuant to the said direction, the Government considered

the writ petitioners' request but rejected the same. Challenging the rejection order dated 14.01.2008, the petitioners filed W.P.No.15464 of 2008. Vide order dated 01.09.2009, the rejection orders were set aside in the following terms:

“7. Further, subsequent to the issuance of retrenchment notice under Section 25 FFF of the Act, admittedly, one Mr.Ravi was re-deployed. His re-deployment was not at the instance of any court order. When Mr.Ravi could be redeployed even after the issuance of retrenchment notice under Section 25 FFF of the Industrial Disputes Act, hardly I find any reason as to why these two petitioners alone should be discriminated by taking a stand that their cases cannot be considered because already retrenchment notice has been issued. In my considered opinion, absolutely there is no special reason to deny the same benefit to the petitioners. Further, the reasons stated in the impugned order for declining redeployment to the petitioners, are not tenable and those reasons are surely violation of Article 14 of the Constitution of India. In that view of the matter, I am inclined to quash the impugned order with further direction to the respondents to redeploy the petitioners in any other suitable posts.

8. In the result, the writ petition is allowed; the impugned order is set aside and the respondents are directed to re-deploy the petitioners in any other suitable post in any

other Department falling under the control of the respondents, within a period of three months from the date of receipt of a copy of this order. Connected miscellaneous petition is closed. No costs.”

Aggrieved by the said outcome, the Government went on appeal. W.A.No.254 of 2010 filed by the Government was disposed of by the Hon'ble First Bench vide order dated 10.11.2010 with the following modification:

“5. There is no dispute with regard to legal proposition that after the issuance of retrenchment notice under Section 25 (FFF) of the Industrial Disputes Act, the employee cannot, as a matter of right, claim re-employment in another department. But, in the instance case, as noticed above, the request/representation of other employees were considered and some of the employees were given re-employment in different departments. The respondents/writ petitioners, therefore, sought a relief from this Court for issuance of appropriate direction to consider their cases also for re-employment. However, the learned Single Judge, instead of issuing direction to the appellants for considering the case of the respondents/writ petitioners for re-employment in any other suitable post, issued a direction for re-deployment. Hence, the operative portion of the impugned judgment alone needs to be modified to the extent that the appellants judgment alone needs to be modified to the extent that the appellants shall

consider the case of the respondents for giving them re-employment in any suitable post in any other department as has been given to some of the erstwhile employee of the AGROFED.”

4. Since the petitioners felt aggrieved that the Hon'ble First Bench had modified the order of redeployment as fresh appointment, they approached the Hon'ble Apex Court. S.L.P.No.12121 of 2011 filed by the writ petitioners was disposed of with the following directions :

“Permission to file additional documents is granted.

After hearing the learned senior counsels for the parties, we deem it appropriate to dispose of the special leave petition with the following directions:

(1) It will be open for the petitioners to join in the post of Junior Training Officers in the Training Wing of Department of Employment and Training, as offered by the State Government in paragraph 8 of its Compliance Affidavit filed on 9th May, 2016. If the petitioners so join, the period of service rendered by them in Tamil Nadu Agro Engineering and Service Co-operative Federation Limited (AGROFED) will be taken into account for computation of the total length of service that the petitioners would have rendered on attaining the age of superannuation.

(2) If the petitioners join in the aforesaid post or even if the

petitioners decline the aforesaid offer, it will be open for the petitioners to file a representation before the State Government for absorption in a suitable post commensurate with their qualification(s) and past service rendered.

(3) In considering the said request of the petitioners, the State Government will take into account the circumstances in which one M.Ravi was appointed as Junior Engineer in the Municipal Administration and Water Supply Department on the basis of the Corporation's Resolution by relaxation of the Tamil Nadu Corporation Engineering and Water Supply Subordinate Services Rules, 1996 with regard to qualification. The representation of the petitioners, if filed, will be disposed of by the State Government within a period of six weeks of the receipt thereof.”

In terms of the aforesaid direction, the Government appears to have offered the post of Junior Training Officer in the Department of Employment and training to the writ petitioners. The writ petitioners had declined the same. Instead, they submitted representation seeking appointment in Agricultural Department commensurate with their qualifications and experience. The said request was considered and G.O(Ms)No.121 Agricultural Department, dated 03.05.2007 was issued appointing the writ petitioners as Assistant Engineers. It was made

clear that this appointment would be considered as fresh appointment and that seniority can be claimed only from the date of joining in Agricultural Engineering Department and that the issue of counting their past service in AGROFED would be examined separately. The writ petitioners submitted fresh representations dated 10.06.2017 seeking parity of treatment with Ravi. The said request was not considered and kept pending. Hence the petitioners filed one more writ petition in W.P.No.972 of 2019 and the same was disposed of on 18.11.2019 by directing the respondents to dispose of the said representations. Thereafter, the impugned order dated 14.01.2020 came to be passed by the first respondent. Challenging the same, the present writ petition has been filed.

5. The learned counsel appearing for the writ petitioners reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to quash the impugned communication and to grant the relief as sought for. The primary contention of the learned counsel appearing for the writ petitioners is that the petitioners ought to have been accorded parity of treatment that was given to one Ravi who was admittedly junior to the writ petitioners in AGROFED. He would further point out that this Court ought to give full effect to the spirit underlying the order of the Hon'ble Apex Court which obviously has been passed under Article 142 of the Constitution of India.

6. The respondents filed detailed counter affidavit and the learned Additional Advocate General took me through its contents. The learned Additional Advocate General would point out that the petitioners cannot anchor their entire claim on the treatment accorded to Thiru.Ravi. Though he would not concede that the treatment given to Ravi was illegal, he would still contend that Article 14 of the Constitution of India cannot be invoked in such cases. He would also state that Thiru.Ravi could be accommodated because of the resolution passed by Tirunelveli Municipal Corporation and that the only benefit given to him was relaxation of the some of the requirements of the Recruitment Rule and nothing more than that. The writ petitioners cannot ride piggy back on Ravi. He would also strongly emphasise the fact that AGROFED is a non-pensionable establishment and that therefore, the service put in by the writ petitioners therein cannot be counted for the purpose of pension. The learned Additional Advocate General laid considerable emphasis on the reasons set out paragraph No.4 of the impugned order. He pressed for dismissal of the writ petition.

7. I carefully considered the rival contentions and went through the materials on record. The petitioners have asked for the moon in the writ

petition. I make it clear at the very outset that they cannot be granted refixation of seniority from the date of appointment in “AGROFED”.

8. The only question that causes for consideration is whether the service put in by them in AGROFED can be taken into account. The learned Additional Advocate General would strongly contend that AGROFED is a non-pensionable establishment and that granting the relief as sought for by the writ petitioners would run contrary to Rule 12(1) of the Tamil Nadu Pension Rules, 1978. No doubt, this is a formidable argument but then the writ petition filed by the petitioners herein is a third round of litigation.

9. Their case was accepted in *toto* by a learned Judge of this Court in W.P(MD)No.15464 of 2008 dated 01.09.2009. Of course, the Hon'ble First Bench effected a modification of the order passed by the learned Single Judge. When the matter went before the Hon'ble Apex Court, the Government filed counter affidavit, in which, they had undertaken to count the entire service put in by the writ petitioners in AGROFED provided they join as Junior Training Officer in the Department of Employment and Training. In the light of the said stand taken by the Government, the Hon'ble Apex Court had issued certain directions which had already been extracted supra. In view of the aforesaid stand already taken by the Government before the Hon'ble Apex Court and the

direction set out in Clause No.1, it is now not open to the respondents to contend in this writ petition that AGROFED being a non-pensional establishment, the service put in by the writ petitioners therein will not be taken into account.

10. The learned Additional Advocate General contended that an illegality cannot form the basis for extending the very same benefit to the similarly placed individuals. But the Government is not taking the stand before this Court that the treatment accorded to Ravi was an illegality. That is not the stand taken before me. Right from the day one, the petitioners have been seeking only parity of treatment and nothing else. In fact, the said plea has been substantially accepted even in the first round of litigation itself. When service put in by Ravi in AGROFED has been taken into account, it would be inequitable and a clear infraction of the mandate of Article 14 of the Constitution of India to deny the writ petitioners benefit of the said service.

11. Even while declining the other reliefs sought for by the writ petitioners herein, the impugned order is set aside to the extent mentioned above. In this view of the matter, the following direction is passed. The service put in by the writ petitioners in AGROFED will be taken into account and computed as a part of their total length of service of the petitioners on

attaining the age of superannuation. In other words, the service put in by them in AGROFED from 1990-2004 and the service put in by them in Agriculture Department would be added and clubbed. The impugned order is interfered with to the limited extent as mentioned above. This writ petition is partly allowed. Consequently, connected miscellaneous petitions are closed. No costs.

26.10.2022

Index : Yes / No

Internet : Yes/ No

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