



W.A.No.1264 of 2019

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

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| <b>Reserved on<br/>21.02.2023</b> | <b>Delivered on<br/>03.03.2023</b> |
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**CORAM**

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN**

**AND**

**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI**

**Writ Appeal No.1264 of 2019**

**and**

**CMP No.8632 of 2019**

- 1.The Secretary to Government (Agriculture)  
Government of Union Territory of Puducherry,  
Puducherry.
- 2.Pandi Jawaharlal Nehru College of Agriculture (Karaikal)  
Society, Rep. by its Chairman cum Chief Secretary to Government,  
Chief Secretariat, Puducherry.
- 3.The Dean,  
Pandit Jawaharlal Nehru College of Agriculture and  
Research Institute, Serumavilangai,  
Nedungadu Post, Karaikal – 609 609.
- 4.The Director of Accounts and Treasuries,  
Government of Union Territory of Puducherry,  
Puducherry.
- 5.The Under Secretary to Government,  
Agriculture Department,  
Government of Union Territory of Puducherry,  
Puducherry.



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6.The Director of Agriculture,  
Government of Union Territory of Puducherry,  
Puducherry.

7.The Secretary to Government,  
Department of Personnel and Administrative Reforms,  
Government of Union Territory of Puducherry,  
Puducherry.

... Appellants

Vs.

1.Dr.D.Adiroubane

2.The Union of India,  
Represented by its Secretary to Government,  
Ministry of Home Affairs,  
New Delhi.

3.The Secretary to Government,  
Department of Penion & Pensioner's Welfare,  
New Delhi.

... Respondents

**Prayer:** Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 22.11.2018 made in W.P.No.33325 of 2012.

For Appellants : Mr.R.Syed Mustafa

For Respondents : Mr. T.Sai Krishnan, for R1

Mr.N.Ramesh, for RR2 & 3



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## **J U D G M E N T**

*(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)*

The appellants, viz. the Government of Puducherry and Pandit Jawaharlal Nehru College of Agriculture and Research Institute, Karaikal are on Appeal against the order of the Writ Court directing payment of pension treating the first respondent as a Government Servant till date of his retirement i.e. 01.09.2012, after setting aside the orders of the fourth respondent dated 13.09.2012, 28.05.2012, 10.09.2012 and the order of the Secretary to Government, Agricultural Department dated 14.02.2012.

2. The facts that are necessary for the disposal of this Writ Appeal are as follows:

The first respondent joined as a Trainee in the Agricultural Department of Puducherry on 14.11.1973. He was promoted and posted as an Agricultural Officer on 08.09.1981 with effect from 24.06.1981. The Government of Puducherry started the second appellant Institute at Karaikal on 30.11.1987. The first respondent was deputed to serve in the said Institute from 05.11.1990 under an order of the Government dated



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21.02.1991. On 11.09.1996 the first respondent was appointed as an Assistant Professor. He was provisionally absorbed as Assistant Professor on 20.03.1994. On 11.09.1996 orders were issued for permanent absorption of the first respondent as an Assistant Professor in Agricultural Entomology with effect from 05.11.1990. Consequent upon such absorption, the first respondent tendered his technical resignation to the Department of Agriculture of Puducherry on 26.05.1997.

3. Pursuant to such technical resignation, on 13.08.1997, the Agricultural Department of Government of Puducherry issued an office order indicating the Pro-rata retirement benefits granted to the first respondent and other Agricultural Officers who have been absorbed as Assistant Professors in the second appellant Institute. The employees were also required to exercise their option to receive the pro-rata retirement benefits in one lump sum or as monthly pension. On 13.01.1998, the first respondent sent a reply stating that he is willing to have the benefits of combined service under the Government and the second appellant Institute on the assumption that the second appellant Institute is having a pension scheme and therefore, required the Government to issue a corrigendum allowing him to exercise an option to



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receive the benefits of combined service. It is not in dispute that such corrigendum was not issued.

4. Though the Institute passed certain resolutions requesting the Government to allow it to have a pension scheme such resolutions were not approved by the Government of Puducherry. Thereafter, on 01.11.2001 the first respondent in fact exercised his option requiring the Government to transfer his lump sum pro-rata pension to the Dean of the second appellant Institute to be credited to his pension fund. The said request was not complied with and there was correspondence up and down between the Institute, the Department of Agriculture and the first respondent. When the first respondent was about to retire in the year 2012, he again raised the issue relating to pension and the Government of Puducherry sent a reply on 14.02.2012 stating that his request for pension would be addressed after the disposal of Writ Petition in WP No.13571 of 2011 which is pending before this Court. The said Writ Petition related to the claim for pension by the employees of the second appellant Institute.

5. Since the respondents expressed their inability to pay pension



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on the ground that there is no pension scheme in the Institute and the Central Government by its D.O. letter dated 16.03.2000 had made it very clear that the Autonomous Institutions under various Ministries and Departments of Government of India will continue to follow the annuity scheme through the Life Insurance Corporation of India based on the voluntary contributions of the employees and no pension scheme on the pattern of the Government of India Pension Scheme would be allowed in such autonomous bodies. The first respondent had approached this Court with the above Writ Petition seeking to quash the communications denying him pension and to direct the respondents to pay Pension. It is not in dispute that the other benefits have been paid over to the first respondent herein.

6. The Writ Petition was resisted mainly on the ground that in the absence of any Pension Scheme in the second appellant Institute which is an Autonomous Body, the respondent cannot claim payment of pension. Since he was absorbed as an Assistant Professor in the second appellant Institute with his consent the respondent cannot contend that he should be paid pension as if he was a Government servant till the date of his retirement.



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Even in the year 2000, the respondent was asked to make his choice clear, as to whether, he would receive the pro-rata pension in a lump sum or as a monthly pension and he exercised his option to receive it in a lump sum. He had however, made a request that the lump sum be deposited in the pension account of the second appellant Institute, despite having been informed that the Institute did not have a Pension Scheme. According to the appellants, the first respondent took a calculated risk by exercising an unavailable option of seeking deposit of the lump sum pro-rata pension in the Pension Fund of the second appellant Institute.

7. The Writ Court relied upon the conflicting statements that were made in the counter affidavits filed by the appellants before it and held the appellants are responsible for misleading the first respondent into believing that there was a Pension Scheme in the second appellant Institute. On the said conclusion, the Writ Court allowed the Writ Petition as prayed for and directed payment of the pension with 12% interest.

8. Aggrieved the appellants are before us by way of this intra Court Appeal.



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9. We have heard Mr.R.Syed Mustafa, learned Special Government Pleader appearing for the appellants and Mr.T.Sai Krishnan, learned counsel appearing for the first respondent and Mr.M.Ramesh, learned counsel appearing for respondents 2 & 3.

10. Mr.R.Syed Mustafa, learned Special Government Pleader appearing for the appellants would vehemently contend that a direction issued to pay pension to the first respondent is in violation of all canons of service law. Once the first respondent who was sent on deputation was absorbed on a permanent basis by the second appellant Institute, the Writ Court ought not to have directed the Government to pay pension treating the first respondent as a Government servant till the date of his retirement. The learned Special Government Pleader would also point out that despite having been informed that there was no Pension Scheme in the second appellant Institute, the first respondent persisted with his request for depositing the lump sum pro-rata pension to the non-existent pension fund of the Second Appellant Institute. While conceding that the Institute made several attempts



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to have a pension scheme akin to that of the Central Government Pension Scheme for itself, the said request or attempts were rejected or foiled by the Government of Puducherry, which took a firm stand that such a Pension Scheme cannot be sanctioned as the second appellant Institute is an Autonomous Institute which is expected to be a self financing Institute.

11. Contending contra, Mr.T.Sai Krishnan, learned counsel appearing for the first respondent would vehemently argue that the second appellant Institute always projected that it had a pension scheme. Resolutions were passed by its Governing Board which mainly consists of the Officers of the Government of Puducherry seeking a separate pension scheme akin to the one that the Government of India has. Draft Pension Rules were also circulated amongst the employees of the second appellant Institute. Therefore, according to the learned counsel for the first respondent, the employees were led to believe that the Institute had a pension scheme and they would be paid pension by combining their services with the Government of Puducherry and the Institute.

12. The learned counsel appearing for the first respondent would



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aver that three persons who were sent on deputation from the Tamil Nadu Agricultural University were being paid pension by the second appellant Institute and that the Rajiv Gandhi Institute of Veterinary Education and Research, another Autonomous body has implemented a pension scheme for its employees. The communication dated 14.02.2012 to the effect that the Government is awaiting the disposal of the Writ Petition No.13571 of 2011 for formulation of a pension scheme in the second appellant Institute is also cited by the learned counsel appearing for the first respondent as a factor which led the first respondent to believe that eventually there would be a pension scheme launched for the second appellant Institute.

**13.** We have considered the submissions of the learned counsel on either side.

**14.** The fact that the second appellant Institute has no pension scheme of its own is beyond pale of doubt. Various correspondence between the parties would show that the attempt to have a pension scheme was consistently repelled by the Government of Puducherry. Even in the year 2000, it was made clear that the Autonomous Institutes cannot have a



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pension scheme as that of the Government of India Pension Scheme by the Office Memorandum dated 16.05.2000. The respondent, however, relying upon the resolutions of the Board of Management of the second appellant Institute firmly believed that there would be a pension scheme and therefore, opted for deposit of his pro-rata pension with the pension fund of the Institute. The fact that the first respondent believed that there was a pension scheme in the Institute is borne out by his letter dated 30.01.1998, wherein he has stated as follows:

*“As, I am willing to have the benefits of combined service under the Government and in the PAJANCOA & RI, since the Institute is having pension scheme, a corrigendum may be issued to exercise option to receive the benefits of combined service.”*

**15.** No doubt the governing body of the second appellant society had in its meeting held on 30.07.1999 proposed to have a pension scheme for the staff and the same was also followed in the meeting dated 21.12.1999, wherein the draft rules were approved. Unfortunately for the first respondent and the other employees, the proposal was not approved by



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the Government of Puducherry and therefore, their right to claim pension remained a distant dream. No doubt the appellants are at fault for not having communicated, very clearly, that there is no pension scheme in the Institute. Different signals have been sent out at different times by the Department of Agriculture, Government of Puducherry and by the second appellant Institute. Even as late as 14.02.2012, the Department of Agriculture had written to the first respondent stating that his request for pension would be considered after the disposal of the Writ Petition in WP No.13571 of 2011 by this Court.

**16.** We are informed that WP No.13571 of 2011 is a Writ Petition seeking a Mandamus directing the Institute to implement a pension scheme and it is stated to be pending even as of today. We do not express any opinion on the merits or demerits of such claim made before this Court. We find that the Writ Court had directed payment of pension treating the first respondent as a Government employee till his retirement. We are afraid that we cannot affirm the said decision since the first respondent was no longer in service of the State. On his voluntary resignation being accepted he ceased to be in the services of the State. Therefore, he cannot be treated as an



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employee of the Government for the purposes of grant of pension. True, there has been some lapse on the part of the Authorities in dealing with the claim for pension by the first respondent, but the said lapses by themselves cannot confer the status of a Government servant on the first respondent.

17. Even in the annexure to the letter dated 21.08.1997 requiring the petitioner to exercise its option, it has been clearly stated that the first respondent should exercise his option either to receive pro-rata monthly pension or to receive a lump sum amount in lieu of monthly pension. The first respondent exercised the second option to receive a lump sum amount in lieu of monthly pension, but qualified it requiring the lump sum amount to be deposited in the non-existent pension fund account of the second appellant society. Of course the appellants would have done well to inform the first respondent that such pension account does not exist and required him to exercise his option clearly. The failure to provide such information coupled with the fact that resolutions were passed by the governing body seeking a pension scheme led the first respondent to believe that he would get pension at some point of time.



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18. We find from the records that have been produced before us and the affidavit filed by the Chief Secretary, Government of Puducherry, that the Government of Puducherry took a clear stand all through, that the second appellant being an Autonomous body cannot have a pension scheme and employees of such Autonomous bodies cannot be paid pension treating them as Government servants.

19. The learned Special Government Pleader appearing for the appellants would also rely upon the judgments of the Hon'ble Supreme Court in Civil Appeal Nos.7682 to 7684 of 2021 in *The State of Maharashtra & Anr. V. Bhagwan & Ors.*; Civil Appeal Nos.7685 to 7687 of 2021 in *The State of Maharashtra & Ors. V. Sudhakar Namdeo Gaikwad & Ors.*; and Civil Appeal Nos.7688 to 7690 of 2021 in *The State of Maharashtra & Anr. Vs. Uttam & Ors.*, in support of his contention. The Hon'ble Supreme Court while dealing with the claim for pension by the employees of the Autonomous Bodies has held as follows:

(i) The employees of autonomous bodies cannot claim, as a matter of right, the same service benefits on par with the Government employees. Merely because such



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autonomous bodies might have adopted the Government Service Rules and/or in the Governing Council there may be a representative of the Government and/or merely because such institution is funded by the State/Central Government, employees of such autonomous bodies cannot, as a matter of right, claim parity with the State/Central Government employees. This is more particularly, when the employees of such autonomous bodies are governed by their own Service Rules and service conditions. The State Government and Autonomous Board/Body cannot be put on par.

(ii) Grant of Pensionary benefits is not a one-time payment. Grant of pensionary benefits is a recurring monthly expenditure and there is a continuous liability in future towards the pensionary benefits.

(iii) The Court should refrain from interfering with the policy decision which might have a cascading effect and having financial implication. Whether to grant certain benefits to the employees or not should be left to the expert body and undertakings and the Court cannot interfere



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lightly. Granting of certain benefits may result in a cascading effect having adverse financial consequences.

**20.** In view of the above categorical pronouncement of the Hon'ble Supreme Court, we are constrained to conclude that unless there is a pension scheme available and such pension scheme provides for payment of pension an employee of an Autonomous Body cannot claim pension. The mere fact that there were requests by the Managing Committee or the Governing Board of such Autonomous Body to permit it to have a pension scheme on par with the Government of India's Pension Scheme, will not enable its employees to claim pension as if they are Government Employees. In view of the above conclusions, we are constrained to interfere with the order of the Writ Court. At the same time, we must point out that the conduct of the officials of the Government of Puducherry as well as the persons in charge of the Management of the second appellant are far from satisfactory.

**21.** The counter affidavits filed as pointed out by the Writ Court have not reflected the correct position and even the communications have sent wrong signals at various points of time. We find total carelessness and



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negligence on the part of the Government of Puducherry and its officials in handling the situation. We are now informed that the other benefits, viz. the Provident Fund, the Gratuity and the Leave Encashment have been paid over to the first respondent. Therefore, the question that remains is whether the direction of the Writ Court to pay pension should be sustained or not. As already pointed out the Hon'ble Supreme Court has held that the employees of Autonomous Bodies which do not have a pension scheme cannot be paid pension. Therefore, we find ourselves unable to confirm the direction of the Writ Court for payment of pension treating the first respondent as a Government employee. We are therefore constrained to set aside the direction of the Writ Court with reference to payment of pension alone. As regards the payment of other benefits, the direction granted by the Writ Court will stand, the cost imposed by the Writ Court is also sustained.

**22.** The next question that would arise is, as to whether, the first respondent would be entitled to pension for the services rendered by him with the Government of Puducherry, the answer must be in the affirmative. Since the first respondent has rendered services in the Government of



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Puducherry as a Government employee for more than the qualifying period, he would be entitled to pension for the services rendered by him in the Government of Puducherry. Such pension would be based on his last drawn salary as a Government servant.

**23.** The said pension ought to have been paid to him from at least on the date on which he exercised his option namely at least the date on which he was absorbed as a permanent employee of the second appellant Institute. There has been considerable delay in payment of the pension. Pension is an entitlement of a Government servant any delay in payment of such pension should be compensated by payment of interest. We therefore conclude that the Government of Puducherry shall calculate the pension payable to the first respondent on the basis of his last drawn salary as an employee of the Department of Agriculture of the Government of Puducherry and pay the same from the date on which he was absorbed into the services of the second appellant Institute.

**24.** The Pro-rata monthly pension shall be determined and the same shall be paid with interest at 6% per annum from the date on which



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such monthly pension fell due till actual payment. We find that the absorption has been confirmed on 20.03.1994 with effect from 05.11.1990.

Therefore, the first respondent would be deemed to have been in the services of the Government of Puducherry till 04.11.1990. Therefore, he would be entitled to pension from the month of December 1990 payable from the month of January 1991. The Government of Puducherry shall calculate the pension payable to the first respondent as on 04.11.1990 and pay the same month on month with interest at 6% from the date on which such pension fell due till date of payment. We are imposing the burden of payment of interest on the pension as we find that the first respondent has been unjustly denied the benefit of pension because of the carelessness and negligence on the part of the Authorities in handling the issue.

**25.** The Writ Appeal is disposed of on the above terms. Since we have sustained the imposition of costs of Rs.50,000/- by the Writ Court, we direct the parties to bear their own costs in the Writ Appeal. Consequently, the connected miscellaneous petition is closed.



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**(R.SUBRAMANIAN, J.) (K.GOVINDARAJAN THILAKAVADI,  
J.)**

**03.03.2023**

Index: Yes  
Internet: Yes  
Neutral Citation : Yes  
Speaking Order  
jv

To

- 1.The Secretary to Government (Agriculute)  
Government of Union Territory of Puducherry,  
Puducherry.
- 2.Chairman cum Chief Secretary to Government,  
Pandi Jawaharlal Nehru College of Agriculture (Karaikal) Society,  
Chief Secretariat, Pududcherry.
- 3.The Dean,  
Pandit Jawaharlal Nehru College of Agriculture and  
Research Institute, Serumavilangai,  
Nedungadu Post, Karaikal – 609 609.
- 4.The Director of Accounts and Treasuries,

20/22



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Government of Union Territory of Puducherry,  
Puducherry.

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- 5.The Under Secretary to Government,  
Agriculture Department,  
Government of Union Territory of Puducherry,  
Puducherry.
- 6.The Director of Agriculture,  
Government of Union Territory of Puducherry,  
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- 7.The Secretary to Government,  
Department of Personnel and Administrative Reforms,  
Government of Union Territory of Puducherry,  
Puducherry. 2.The Union of India,  
Represented by its Secretary to Government,  
Ministry of Home Affairs, New Delhi.
- 8.The Secretary to Government,  
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**R.SUBRAMANIAN, J.**

**and**

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(jv)

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