



WP No.13040 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2023

CORAM

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

WP No.13040 of 2016

V.Srinivasan (deceased)

2. Mallika

3. Venkatesan

4. Rengaraj

... Petitioners

-Vs-

1. The Controller
Tamil Nadu Agriculture University
Coimbatore.

2. The Directorate of Research
Tamil Nadu Rice Research Institute
Aduthurai, Tanjore District.

3. The Registrar
Tamil Nadu Agriculture University
Coimbatore District.

... Respondents



WP No.13040 of 2016

PRAYER: Writ Petition under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records relating to the order passed by the third respondent in No.ALO/WP No. 38586/2015 dated 15.02.2016 and quash the same and further direct the respondents to follow the G.O.408 dated 25.08.2009 and pay pension with accrued interest.

For Petitioners	:	Mr.S.Parthasarathy
For RR 1 & 2	:	Mr.K.Surendaran Additional Government Pleader
For 3rd Respondent	:	Mr.M.Vijaya Mehanath

ORDER

Writ Petition has been filed in the nature of Certiorarified Mandamus seeking interference with an order passed by the third respondent / the Registrar, Tamil Nadu Agriculture University, Coimbatore District, in No. ALO/WP No. 38586/2015 dated 15.02.2016 and direct the respondents to follow G.O 408 dated 25.08.2009 and pay pension with accrued interest.



WP No.13040 of 2016

WEB COPY

2. The Writ Petition had been filed by V.Srinivasan, who had been appointed as Casual Mazdoor in the second respondent / the Directorate of Research, Tamil Nadu Rice Research Institute, Aduthurai, Tanjore District, on 05.06.1975. He worked till 18.09.1989. He was then made permanent as a provisionalisd unskilled mazdoor and later, as Office Assistant. He retired on attaining the age of superannuation on 28.02.2015 as Office Assistant (Selection Grade). The petitioner, had raised objections claiming that his earlier period of service from 05.06.1975 till 18.09.1989, during which he worked on daily wages should also be taken into consideration, while determining the classifying years for calculation of pension. By not extending that benefit, he averred that he had suffered financial loss and the pension was also reduced.

3. The writ petitioner had earlier filed W.P.No. 38586 of 2015 and a direction was given on 14.12.2015 by a learned Single Judge of this Court to the first respondent / the Controller, Tamil Nadu Agriculture University, Coimbatore, to examine the representation of the writ petitioner herein.



WP No.13040 of 2016

WEB COPY

That representation was rejected, necessitating the filing of the present Writ Petition.

4. During the pendency of the Writ Petition, the petitioner V.Srinivasan unfortunately died and by an order dated 03.04.2023 in W.M.P.No. 5803 of 2023, his legal representatives had been substituted to proceed further the issues in the Writ Petition as second to fourth petitioners.

5. The petitioners placed reliance on G.O.Ms.No. 408, Finance (Pension) Department, dated 25.08.2009, by which the Government had directed that the period of service in which an employee worked as daily wages along with three other categories were directed to be regularised and also to be taken into consideration while determining the qualifying years for grant of pension.



WP No.13040 of 2016

WEB COPY

6. On the side of the respondents, the facts stated above relating to the service condition of the petitioner had not been denied or disputed. The only issue which they contest is that there is no specific statement given in G.O.Ms.No. 408, Finance (Pension) Department, dated 25.08.2009, that it also applies to Universities. It has been pointed out that the respondent herein is the Tamil Nadu Agriculture University. There had been correspondences between the third respondent and the Government in this regard and reliance is placed on a letter wherein it had been stated by the Government that it is the choice of the Universities or aided institutions to adopt G.O.Ms.No. 408, Finance (Pension) Department, dated 25.08.2009. The Government had not specifically stated that it is applicable nor has it stated that is not applicable, neither has it stated that it could be adopted partially. The choice was left entirely with the particular institute, which sought clarifications and in this case, the third respondent.

7. The learned counsel for the third respondent had brought to the notice of this Court the minutes of the third respondent in which the Board



WP No.13040 of 2016

members had deliberated on application of G.O.Ms.No. 408, Finance (Pension) Department, dated 25.08.2009. Even before examining the minutes, it must be placed on record that G.O.Ms.No. 408, Finance (Pension) Department, dated 25.08.2009, was with respect to those who worked in any Government Department under non provisionalisied service/consolidated pay/honorarium/daily wages, who had been subsequently brought under regular establishment prior to 01.04.2003. The third respondent had their own doubts relating to applicability of this particular Government Order to the employees of their own University. The cut off date is 01.04.2003. That cannot be interfered with by any organisation, who adopts that Government Order.

8. The other aspect is that the employee should be in Government Department. The third respondent strictly cannot be categorised as a Government Department. It is for that reason that the learned counsel for the respondents brought to the notice of this Court the minutes of the 154th Meeting of the Board of Management of the respondent University held on



WP No.13040 of 2016

WEB COPY

08.03.2010. It was held approximate to the date on which the Government Order was brought into effect.

9. The specific agenda was to approve one half of the service rendered by an employee under any of the above mentioned categories for the purpose of pensionary benefits. By the proceedings dated 27.03.2010, the Board had taken a decision to request the Government to extend benefits in G.O.Ms.No. 408, Finance (Pension) Department, dated 25.08.2009, to the retired employees of the Agriculture University, who fell under the above categories. In the meanwhile, they also went about calculating the number of employees, who would so benefit. There was yet another minutes of a meeting, which had been produced by the learned counsel for the respondents and that was on 13.07.2010 which is in proceedings No. 155. It had been stated that the subject had been considered in the earlier meeting of the Board and and the financial commitment had been directed to be produced. It was then decided as follows:-



WP No.13040 of 2016

"If the Government Order is implemented in the TNAI the retired employees who needs short spell of service to satisfy the pensionary rules will be benefited. Hence, it is proposed to place the subject again before the Board of Management for adoption of the above G.O., in the University to enable to extend the benefits to the retired employees who falls under the above category to count the half of the services rendered by an employee under non-provincialised service/consolidated/Honorarium for the purpose of pensionary benefits except the service rendered by the retired employees in daily wages."

10. A reading of the above resolution passed or decision taken would imply that the third respondent had applied their mind and had taken a decision to extend the benefit of G.O.Ms.No. 408, Finance (Pension) Department, dated 25.08.2009 to those employees under non provisionalised services / consolidated pay/ honorarium / daily wages. They had however excluded the service rendered by the retired employees in



WP No.13040 of 2016

daily wages. This stand has been consistently maintained and this is the reason why the petitioner's service when he was working as daily wage was not taken into consideration while calculating the pension.

11. The one factor which is also to be mentioned is that under G.O.Ms.No. 408, Finance (Pension) Department, dated 25.08.2009, the Government had stipulated that the period for which any employee in any Government Department falling under the above mentioned categories would be entitled for pension for one half for the period which he or she worked as non provisionalisied services / consolidated pay / honorarium / daily wages. The third respondent then proceeded to address the Government with respect to the resolution passed by them and the decision taken by them. A copy of a letter dated 09.08.2010 issued by the Government to Annamalai University had also been produced as document which gave liberty to the Universities to adopt G.O.Ms.No. 408, Finance (Pension) Department, dated 25.08.2009 and take a decision. Based on these documents by which primarily the stand of the respondents is



WP No.13040 of 2016

WEB COPY

reflected, learned counsel insisted that there were various factors which played upon, the mind of the respondents for excluding those, who rendered service on daily wage from their conception of applicability under G.O.Ms.No. 408, Finance (Pension) Department, dated 25.08.2009.

12. The primary one apparently was the financial commitment which may be involved if such benefits were to be extended to all those worked as daily wages. It must also be stated that this particular commitment has not been stated in the resolution passed. The resolution is extracted is quite simple and it is quite straightforward. In the resolution, a decision had been taken to adopt G.O.Ms.No. 408, Finance (Pension) Department, dated 25.08.2009 but for some reason adopted by excluding those who rendered service on daily wage basis.

13. I really wonder as to how this special classification of a clarification could be put into effect by the respondents. The Government had extended grant of the pension for one half number of years for service



WP No.13040 of 2016

WEB COPY

rendered in non-provisionalised service / consolidated pay / honorarium/ daily wages. If in a particular University as in the case of , the respondent University workers of all the four categories or atleast more than two of the categories did render service, then making this particular Government Order applicable to just one category of workers and excluding the other could be termed as exercise of a right of the third respondent University. They could have reasons such as the financial commitment. They should indicate it if they cannot extend such privilege to all the categories of workers. But, the issue of financial commitment should be on the basis of the actual commitment which would be incurred and reducing it in the resolution passed and thereafter, justifying exclusion of a particular clause and inclusion of the other clause. It should also be further explained as to why one particular class was included and the other class was excluded. Any resolution which touches or for that matter any order which touches on the service conditions of employees, whether they are in service or had retired, should have clarity in that resolution or the order. To ensure clarity, reasons must be given.



WP No.13040 of 2016

WEB COPY

14. A persons affected should know why he had been excluded.

The petitioner, in this case, has filed the Writ Petition only expressing wonder as to why his service which he rendered as daily wages, stood excluded. He had been regularised in the year 1989 but even prior to that, he had been rendering service and the nature of service is the same. Unfortunately, his pay was different. It was calculated on daily wage basis. It is not said against the petitioner that his services were less or than those who were in regular service. He has not been regularised but G.O.Ms.No. 408, Finance (Pension) Department, dated 25.08.2009 came to be passed keeping in mind those who suffered a financial loss like the petitioner herein.

15. The Government was conscious of the fact that extending pensionary benefits from the date of regularisation would adversely effect those, who had actually rendered service as daily wage. The words used in the resolution are also “rendered service on daily wages”. This would also mean that the respondents have recognised that the petitioner had actually rendered service. The terms of his pay was only on daily wage.



WP No.13040 of 2016

WEB COPY

16. I do not find any reason as to why a daily wage worker should be excluded and the other categories of workers as stated in the Government Order should be included by the third respondent. There is no clarity in the resolution. There is no clarity even in the notes put up for the Board for consideration.

17. There is yet one further fact. If there is a comparison of economic impact of this particular Government Order on all the four categories independently, it would be those, who worked under daily wages, who would suffer more if they stood excluded and who actually required the benefit to be extended. Therefore, I am not able to understand the rationale behind excluding daily wage workers, who rendered service on daily wage from the purview of G.O.Ms.No. 408, Finance (Pension) Department, dated 25.08.2009 by the respondents.



WP No.13040 of 2016

WEB COPY

18. There has been a precedent on this issue. My attention is drawn to a Judgment of the Division Bench of this Court in ***W.A.(MD).No. 547 of 2012/ The State of Tamilnadu, Municipal Administration & Water Supply Department, Chennai Vs. C.Muthumani***. By Judgment dated 24.08.2017, the appellant therein had questioned an order passed by a learned Single Judge in W.P.(MD).No. 14906 of 2011 on 09.03.2012 with respect to grant of pension to the respondent therein who was working as NMR Pump Operator cum Watchman. Though the ratio is not directly stated, the Division Bench had stated that interest of justice would be served if 50% of the said period were taken for computing pensionary benefits.

19. My attention is also drawn to the Judgment reported in **2014 (2) CTC 777 [Union of India Vs. K.Punniyakoti and Others]**. A Division Bench also held that introduction of the new pension scheme, cannot disentitle, those who had worked and appointed prior to the applicability of the said pension scheme and had directed that 50% of the number of years should be taken into consideration for calculating the pension.



WP No.13040 of 2016

WEB COPY

20. In effect, the ratio laid down in both the Judgments is that for the services rendered under daily wages, 50% of that service must be taken for calculating the pension.

21. I would place a direction on the third respondent to re-work the pensionary benefits of the petitioner herein by taking into consideration his service also from 05.06.1975 till 18.09.1989 and consider one half of that period towards qualifying services for calculating the pensionary benefits and pay the necessary benefits to the petitioners herein, who have been subsequently substituted as petitioners consequent to the death of the writ petitioner. This exercise of the respondents may be completed within a period of three months from the date of receipt of a copy of this order.

22. The Writ Petition stands allowed. No costs.

20.07.2023

vsg

Index: Yes/No

Internet: Yes/No

Speaking / Non Speaking Order



WEB COPY



WP No.13040 of 2016

C.V.KARTHIKEYAN, J.,

vsg

To

1. The Controller
Tamil Nadu Agriculture University
Coimbatore.
2. The Directorate of Research
Tamil Nadu Rice Research Institute
Aduthurai, Tanjore District.
3. The Registrar
Tamil Nadu Agriculture University
Coimbatore District.

WP No.13040 of 2016

20.07.2023