IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.08.2023

Coram:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.20891 of 2019

J.Krishnamoorthy

... Petitioner

Vs.

1.The Secretary to Government,
Department of Agriculture,
Fort St. George, Chennai – 09.

2.The Registrar,
Tamil Nadu Agricultural University,
Coimbatore – 03.

3.The Comptroller,
Tamil Nadu Agricultural University,
Coimbatore – 03.

.... Respondents

Prayer: PETITION filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus calling for the records of the 2nd respondent pertaining to his proceedings in No.R2/BM-CA141/2010 dated 30.08.2010 and that of the 3rd respondent in P(1)/09381/Th.J.K./PUSM/HRS/OOTY/2018 dated 28.06.2018 and quash the orders dated 30.08.2010 and 28.06.2018 respectively and consequently direct the 2nd and 3rd respondents to sanction pension and other retirement benefits of the petitioner by taking into consideration of his 7 years and 2 months of service under time scale of pay as well as 50% of his 20 years 3 months service in the Daily Wages category.

For Petitioner : Mr.R.Sivakumar

For Respondents : Mr.R.Neethi Perumal
Government Advocate – R1
Mr.M.Vijaya Mahanath – R2 & R3

ORDER

This Writ Petition has been filed in the nature of a Certiorarified mandamus seeking records of the second respondent, the Registrar, Tamil Nadu Agricultural University at Coimbatore in proceedings No. R2/BM-CA141/2010 dated 30.08.2010 and of the 3rd respondent, The Comptroller, Tamil Nadu Agricultural University, Coimbatore – 03 in P(1)/09381 /Th.J.K./PUSM/HRS/OOTY/2018 dated 28.06.2018 and quash both the orders and consequently direct the 2nd and 3rd respondents to sanction pension and other retirement benefits of the petitioner by taking into consideration of his 7 years and 2 months of service under time scale of pay as well as 50% of his 20 years 3 months service in the Daily Wages category.

2. Primarily the petitioner places reliance on G.O.Ms.No.408, Finance (Pension) Department dated 25.08.2009. Even before proceeding further with the facts of the case, it is worthwhile to examine the import of G.O.Ms.No.408 dated 25.08.2009. That particular Government Order came to be passed

consequent to the fact that several representations have been received stating the services rendered by the Government servants, who had been employed in non-provisionalised service/consolidated pay/ honorarium/daily wages, were not taken into consideration while their total number of years of service was calculated for pensionary benefits and other benefits.

3. It was also stated that the said Government servants under those four categories were continued to be employed in the same category and were not brought into regular service. In view of that particular complaint being made and understanding the practical situation, the Government had passed G.O.Ms.No.408 dated 25.08.2009.

4. By the said Government order, the employees in the aforementioned four categories, namely, non-provisionalised service/consolidated pay/honorarium/daily wages, were directed to be brought into regular service subject to certain conditions. This was the general import of G.O.Ms.No.408 dated 25.08.2009.

5. The petitioner herein had been appointed in the second respondent, Tamil Nadu Agricultural University at Coimbatore as Casual Mazdoor on daily wages on and from 08.12.1988. Even before examining the facts further, it would be evident that since he was originally employed as daily wages, G.O.Ms.No.408, referred to above, would be applicable to him, if he

satisfies other conditions as stipulated in the said Government Order.

6. The petitioner had given various representations seeking regularisation of service and finally by an order of the second respondent dated 12.11.2009, the services of the petitioner were regularised and he was brought into regular time scale of pay in the pay band of Rs.2,500-5,000 with grade pay of Rs.500/- with effect from 01.04.2009. He was then designated as Mazdoor on time scale of pay. He was subsequently promoted as permanent unskilled Mazdoor and continued in the said post till 31.05.2016 when he retired upon attaining the age of superannuation.

7. The petitioner's services had been fully engaged by the respondents in their Horticulture Research Station, Ooty, Research Farm at Nanjanadu, Ooty. He was also posted in the office of the Professor/Head Horticulture Research Station, Ooty to attend all clerical and administrative works.

8. The petitioner had then sought that his pension and other retirement benefits may be sanctioned. However, by order dated 28.06.2018, the respondents had fallen back to its Resolution passed by the Board of Management of the second respondent University and rejected the request for pension. It had been stated that the services rendered by the petitioner as daily wages between 08.12.1988 and 31.03.2009 could not be brought into regular service and would not be counted for the purposes of calculating

number of years required for pension to be granted. Questioning that order of the second respondent, the present Writ Petition has been filed.

9. Heard the learned counsel for the petitioner, learned Government Advocate for the first respondent and the learned Standing Counsel for the second and third respondents.

10. I had an occasion to consider a similar issue in W.P.No.13040 of 2016 (*V.Srinivasan (deceased) and others V. The Controller, Tamil Nadu Agriculture University, Coimbatore and others*). In the said Writ Petition, this Court had examined a similar issue rejecting the recognition of services as daily wages of the deceased petitioner therein. It had been contended by the respondents/Tamil Nadu Agriculture University that there was no specific indication given in G.O.Ms.No.408 that it would be applicable to Universities and therefore, the Tamil Nadu Agriculture University would not come within the purview of G.O.Ms.No.408.

11. In that particular Writ Petition, documents had been produced, where clarification was sought whether the said Government Order would be applicable and the stand of the Government was that the choice was left to the Universities/Aided Institutions to adopt G.O.Ms.No.408. The Government had not committed themselves that it would be so applicable.

12. The issue therefore, in that Writ Petition, also revolved whether

G.O.Ms.No.408 would actually be applicable to the respondents therein, who are also respondents herein in the present Writ Petition, viz., Tamil Nadu Agriculture University. It was observed in that Writ Petition that the respondents themselves had taken a decision to adopt G.O.Ms.No.408 to non-provisionalised service/consolidated pay/honorarium but not daily wages.

13. Therefore, the issue which had to be answered in the aforesaid Writ Petition would be whether G.O.Ms.No,.408 would be applicable to the respondents and to those who worked on daily wages under the respondents/Tamil Nadu Agriculture University. The issue of financial implication was also pointed out by the respondents therein in the earlier Writ Petition. The said issue had been answered as hereunder:

> *'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 08.03.2010. It was held approximate to the date on which the Government Order was brought into effect.*
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> *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:~

"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 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 provisionalised 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 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 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.*

14. A persons affected should know why he had been excluded. The petitioner, in this case, has filed the Writ Petition only expressing wounder 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.

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.

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.

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.'

14. Though it might appear that in the instant case, the reasoning in the aforementioned Writ Petition is applied, it is justified, since the issues raised in both Writ Petitions are one and the same and revolve around the applicability of G.O.Ms.No.408 dated 25.08.2009 to the respondents and also more specifically to those who worked on daily wages under the respondents University. The decision taken therein has to be maintained in order to maintain consistency which is very essential in any decision making, particularly, within the same Court.

15. In view of that particular fact, the impugned order is set aside and the respondents are directed to take into consideration 50% of the services between 08.12.1988 and 31.03.2009 as period to be taken into consideration while calculating the number of years of service for pensionary benefits. Necessary proceedings in this regard shall be issued within a period of twelve

(12) weeks from the date of receipt of a copy of this order.

C.V.KARTHIKEYAN,J.

16. This Writ Petition stands allowed. No costs.

23.08.2023

Index: Yes/No
Speaking/Non-speaking order
Neutral citation:Yes/No
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