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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date of Reservation	05.07.2023
Date of Judgment	06.07.2023

CORAM

**THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE D.BHARATHA
CHAKRAVARTHY**

WRIT APPEAL(MD)No.970 of 2023

and

C.M.P.(MD)No.7610 of 2023

in

W.P(MD)No.8109 of 2020

- 1.The State Represented by
Secretary to Government
Agricultural Production Commissioner,
Agriculture Department,
St. George Fort,
Chennai-9.
 - 2.The Commissioner of Agriculture/Registrar,
Agro Engineering Service,
Chepak, 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.
- : Appellants/Respondents



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Vs.

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1.R.Alagesan
2.A.Velsami

: Respondents/Petitioners

Prayer:

Writ Appeal has been filed under Clause 15 of Letters Patent to set aside the order, dated 26.10.2022 made in W.P.(MD)No.8109 of 2020.

For Appellants : Mr.R.Baskaran
Additional Advocate General
Assisted by Mr.M.Lingadurai
Special Government Pleader

For Respondents : Mr.B.Saravanan
Senior Counsel
for M/s.Veera Associates

J U D G M E N T

(Judgment of the Court was made by **D.BHARATHA CHAKRAVARTHY, J**)

This Writ Appeal is directed against the order of the learned Single Judge, dated 26.10.2022 made in W.P.(MD)No.8109 of 2020 in and by which, the writ petition filed by the respondents were partly allowed by directing the appellants to add and club the services rendered by the respondents in AGROFED from 1990 to 2004 to be a part of their total length of service on attaining the age of superannuation.



2. The brief facts leading to the filing of the appeal are that the respondents/writ petitioners were working in AGROFED, a Co-operative Society Service, which was not pensionable in nature. While so on account of the winding up of the said society, the question of redeployment/rehabilitation of the employees such as the respondents herein came up for consideration and viz-a-viz, the respondents, the matter was ultimately settled by the Hon'ble Supreme Court of India by an order dated 11.05.2016 in S.L.P(C) No.12121 of 2011. It is essential to extract the entire order of the Hon'ble Supreme Court of India, which reads as follows:

“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



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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.

The special leave petition is disposed of in the above terms.”



2.1. After the above order of the Hon'ble Supreme Court of India, since the respondents were possessing higher qualification, namely, a degree in Engineering, they did not join the post of the Junior Training Officer as per clause (1) above and choose to make a representation without joining the post as per clause (2) of the order of the Hon'ble Supreme Court. In consideration thereof, vide G.O.Ms.No.121, dated 03.05.2017, they were appointed as Assistant Engineers in the Agricultural Department and it is essential to quote paragraph No.10 which stipulates the conditions:

“...10.Hence, the Chief Engineer (Agricultural Engineering) has sent proposals for consideration of the cases of the petitioners in relaxation of Service Rules with the following conditions:-

(i) The appointment is considered as fresh appointment.

(ii) The individual should submit an affidavit from the Notary Public that they are not holding any Government post.

(iii) The seniority can be claimed on the date of joining in this department.”

2.2. After attaining service, the respondents made representation that their earlier service rendered including the break period should be



taken into account in their present post for the purpose of pension as well as seniority and for other benefits. Upon a mandamus being issued to consider the said representation, by an order, dated 14.01.2020, the said prayer of the respondents was rejected *inter-alia* holding that their previous service is a non-pensionable service and therefore, cannot be counted for any purposes. Challenging the said order, the present writ petition was filed. The same was resisted by the appellants herein by filing a detailed counter affidavit. It was the contention of the appellants firstly, that the said service is a non-pensionable service and secondly, the case of one Ravi which was sought to be relied upon was not comparable to the respondents. By the order under appeal dated 26.10.2022, the learned Single Judge found that eventhough the prayer in the writ petition was take into consideration of the entire period of service, and for all purposes, considering the observations of the Hon'ble Supreme Court of India in clause (1) above in Paragraph No.1 of the order, similar benefit can be extended in respect of the post of Assistant Engineer also and accordingly, partly allowed the writ petition by directions to add and club the services from 1990 to 2004 to the total length of service. Aggrieved by the same, the present Writ Appeal is filed.



3. We heard Mr.Mr.R.Baskaran, learned Additional Advocate General assisted by Mr.M.Lingadurai, learned Special Government Pleader appearing on behalf of the appellants and Mr.B.Saravanan, learned Senior Counsel appearing on behalf of the respondents.

4. The learned Additional Advocate General appearing for the appellants would submit that the observations of the Hon'ble Supreme Court of India in Paragraph No.1 would apply only in respect of the post of Junior Training Officer. When the respondents have chosen not to join that post and to make representation demanding higher post, then the observations made in Paragraph No.1 of the order of the Hon'ble Supreme Court of India do not apply. Secondly, the Government Order appointing the respondents itself is clear and categorical that the appointment will only be a fresh appointment and the seniority will be counted only from their date of appointment and therefore, the benefit of the previous service cannot be given in any manner whatsoever. Thirdly, as far as the pension is concerned, when the earlier service is not a pensionable service, then the same cannot be taken into account for the purpose of pension and the petitioners being appointed as a fresh



appointment only in the year 2017 can only claim pension under the new contributory pension scheme and they cannot be placed under the old pension scheme.

5. Per contra, the learned Senior Counsel appearing for the respondents would submit that the order of the Hon'ble Supreme Court of India even in Paragraph No.(2) mentions about a suitable post of commensurate with their qualifications and past service rendered. Therefore, it goes without saying that the direction to consider the services in AGROFED will also apply to the present case also. He would further submit that the present stand of the respondents would lead to a situation, whereby, they would have drawn more pension, had they joined and superannuated from the lower post of Junior Training Officer, for which, the educational qualification was only an Industrial Training Certificate. Thus, only because the petitioners had higher qualification of Bachelors Degree in Engineering and that they opted for the post commensurates to their educational qualifications, the same cannot operate as a disadvantage and therefore, would submit that the order of the learned Single Judge need not be interfered.



6. We have considered the rival submissions made on either side and perused the material records of the case.

7. Firstly, in order to consider the sustainability of the order of the learned Single Judge it is essential to advert as to what relief which has been granted by the learned Single Judge. It is essential to extract Paragraph No.11 of the order of the learned Single Judge which reads as follows:

“ 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.



8. Thus it can be seen that even though a larger relief was claimed by the respondents/writ petitioners to calculate their service from the date of their appointment in the year 1990 upto the date of their appointment as Assistant Engineer in the year 2017 that too for all purposes including seniority and other monetary benefits, the learned Single Judge has directed firstly to take into consideration only the period of service alone and not the period in which, the respondents were not employed, ie., 1990-2004 alone. Secondly, the apprehension expressed by the learned Additional Advocate General that by clubbing and adding the past service, the entire conditions made in the G.O., would stand negated cannot be accepted. The learned Single Judge has specifically mentioned that he is not interfering in the impugned order in all other aspects. As a matter of fact, we hereby clarified and make it clear that the conditions extracted *supra* in Paragraph No.10 that the appointment will be considered as fresh appointment and that the seniority can be claimed only from the date of joining remains unaltered on account of the order of the learned Single Judge. The only relief which is granted by the learned Single Judge is that in respect of the pension. If the length of service rendered by the respondents is taken into account, then the same



would fall before 2004 and therefore, they would be entitled to pension as per the old pension scheme. That takes as to the question as to whether or not? The respondents would be entitled to maintain such a prayer. No doubt, the service is a non-pensionable service, but still a perusal of clause (1) above, the appellants had agreed that the said service will be taken into account, had the respondents joined the post of Junior Training Officer. A careful reading of the order of the Hon'ble Supreme Court of India would make it clear that the first choice that the petitioners are given two options ie., to join service as Junior Officers or to make such representation. Eventhough the clause and direction regarding consideration of the AGROFED service is expressly made only in respect of the post of Junior Training Officer, it would be clear that it need not be again and again reproduced in respect of join of the higher post also. Neither the appellants nor this Court can add any sentence as if the Hon'ble Supreme Court of India had refused the consideration of the service in AGROFED. On the other hand, the order of the Hon'ble Supreme Court of India has to be implemented by its substance and essence and if it is read so as to understand the substance and the order, one has to conclude that the period of service rendered in AGROFED can



be taken into account for the purpose of pension. On the other hand, the contention of the appellants is that the order of Hon'ble Supreme Court of India has to be implemented by word and not by substance. Therefore, when the learned Single Judge has rightly taken into consideration of the essence and import of the order of the Hon'ble Supreme Court of India and had granted the relief, no ground is made out to interfere into the same.

9. Accordingly, the Writ Appeal is disposed of on the following directions:

(i) The order of the learned Single Judge, dated 26.10.2022 in W.P.(MD)No.8109 of 2020 shall stand confirmed.

(ii) It is expressly clarified that the order of the learned Single Judge does not in any manner confer seniority or any other service benefit on the respondents/writ petitioners expect in respect of the payment of pension upon superannuation.



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However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(S.V.N.,J.) & (D.B.C.,J)

06.07.2023

NCC : Yes / No

Index: Yes/No

Index: Yes/No

SJI

To:

1. The Secretary to Government
Agricultural Production Commissioner,
Agriculture Department,
St. George Fort,
Chennai-9.
2. The Commissioner of Agriculture/Registrar,
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Chepak, Chennai-5.
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S.VAIDYANATHAN, J.
AND
D.BHARATHA CHAKRAVARTHY, J.

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Pre-Delivery Judgement made in
WRIT APPEAL(MD)No.970 of 2023

06.07.2023