IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.13571 of 2011
and
W.M.P.Nos.1 & 2 of 2011

PAJANCOA & R1 Employees' Association,
(Regn.No.1198/RTU/2000),
Rep. by its Secretary,
No.12, Anna Street,
Sethur & PO,
Ambakarathur, Karaikal – 609 601. ... Petitioner

Vs.

1.Government of Puducherry,
Secy to Government,
Finance Department,
Puducherry.

2.Pandit Jawaharlal Nehru College of Agriculture
And Research Institute,
Rep. by its Dean,
Karaikal – 609 603. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus directing the respondents to pay Provident Fund as per the GPF Scheme and pension as paid to the employees of Rajiv Gandhi College of Veterinary and Animal Sciences, Pondicherry to the members of the petitioner association.

For Petitioner : Mr.Balan Haridas

For Respondents : Mr.R.Syed Musthafa
Special Government Pleader (Pondicherry)

ORDER

This writ petition has been filed by an Association of non-teaching staff working in the 2nd respondent Institute seeking writ of Mandamus directing the respondents to pay provident fund as per the General Provident Fund scheme (in short 'GPF scheme') and pension as paid to the employees of Rajiv Gandhi College of Veterinary and Animal Sciences, Puducherry (RIVER).

2. It is the case of the petitioner that basing upon the representation submitted by the members of the Association on 30.12.2006 by meeting the Chief Secretary of the 1st respondent to discuss about various problems including the issue relating to grant of permission to switch over from Contributory Provident Fund Scheme to a scheme analogous to the GPF Scheme existing in the Government of Puducherry, they made a request to the 2nd respondent on 30.06.2007 to switch over to GPF Scheme and pension. In furtherance of the same, the governing body of the 2nd respondent stated to

have taken a decision to adopt GPF Pension scheme to the employees of the 2nd respondent Institute and accordingly submitted proposals to the 1st respondent for its approval. As there was no approval accredited by the 1st respondent, the GPS scheme is not being made applicable to the 2nd respondent Institute and as such the petitioner approached this Court by filing the present writ petition seeking the relief as noted above.

3. Though the learned counsel for the petitioner argued the matter at length, by placing reliance on various decisions of the Hon'ble Apex Court and other High Courts, this Court is not inclined to consider the matter in such an elaborate manner, in view of the fact that the learned Division Bench of this Court has already considered an identical claim made by one of the teaching staff working in the 2nd respondent Institute in W.A.No.1264 of 2019 dated 03.03.2023. The 1st respondent in the above said writ appeal was initially appointed in the Agriculture Department of Puducherry and on establishment of the 2nd respondent Institute herein, he was initially sent on deputation to work in the 2nd respondent Institute and thereafter, the services were absorbed from the initial date of deputation as Assistant Professor and

ultimately, he retired from service on attaining the age of superannuation. At that stage, the 1st respondent therein, namely Dr.D.Adiroubane made a claim for payment of pension by treating him as Government Servant in terms of the pension scheme that was available to the Government employees.

4. A learned Single Judge of this Court, having considered the claim of the said person allowed the writ petition and against which the 1st and 2nd respondents herein filed the above said writ appeal No.1264 of 2019. In the order passed in the writ appeal, the learned Division Bench, having taken note of the fact that there was no pension scheme that is available in the 2nd respondent Institute and also after having taken note of the fact that the 1st respondent herein has refused to accredit to the proposal submitted by the 2nd respondent, allowed the said writ appeal holing that in the absence of any pension scheme made applicable to the 2nd respondent Institute, the relief sought by the respondent/writ petitioner therein for grant of pension cannot be granted. The relevant paragraph from the said decision of the learned Division Bench reads as under:

> ***"14.****The fact that the second appellant Institute has no pension scheme of its own 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 pension scheme as that of the Government of India Pension Scheme by the Office Memorandum dated 16.05.2000.

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 Namadeo 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 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 employee. 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 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 of an employee of an Autonomous Body cannot claim pension. The mere fact that there were requests by the Managing Committee or the Government 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."

From the above, it is evident that the learned Division Bench has come to the conclusion that in the absence of any pension scheme made applicable to the particular Institute, no mandamus can be issued by this Court to pay the pension.

5. The contention of the learned counsel for the petitioner that the other similarly situated autonomous bodies have adopted the pension scheme and the same was approved by the 1st respondent and as such, all the autonomous bodies working in the control of the 1st respondent are to be treated equally is concerned, this Court is unable to agree with the said contention. Merely because the petitioner Society and other Societies like RIVER and the autonomous body under the control of the 1st respondent does not make them equal and it is for the respective Societies to decide basing upon their financial availability, other resources and available sources to raise funds, etc., and then take appropriate decisions whether to apply the pension scheme that was applicable to the Government servants or not. In respect of the Societies that have adopted pension Scheme which have taken decisions on their own and they have been implementing the same. In respect of the 2nd respondent Institute, though a resolution was passed as early as in the year 1999, the same was stated to have been negatived by the 1st respondent as observed by the learned Division Bench and thereafter, the 2nd respondent has not taken any steps for adopting the pension scheme to its

employees. Admittedly, the said proposal of the 2nd respondent is not approved by the 1st respondent.

6. When the members of the petitioner Association joined the services in the 2nd respondent Institute, there was no pension scheme available and therefore, knowing fully well that there is no pension scheme only the petitioners have joined the services and therefore the members of the petitioner association cannot claim or compel the 2nd respondent to adopt the pension scheme. The stand of the 1st respondent not to allow the autonomous body like the 2nd respondent to adopt pension scheme is very clear from the counter affidavit filed by the 1st respondent before this Court. There is no change in the stand of the 1st respondent.

7. From the perusal of the material placed before this Court along with additional counter affidavit filed by the 1st respondent especially the note file, it is seen that the proposal submitted by the 2nd respondent to introduce a pension scheme for its employees was returned by the finance department of the Government of Puducherry. Thus, there is no proposal of

the 2nd respondent pending with the 1st respondent for applying pension scheme to the employees working in the 2nd respondent Institute. In the absence of any decision taken by the 2nd respondent on the application of the pension scheme to its employees, no mandamus can be issued extending the said benefit on par with the other Institutions where admittedly, the pension scheme was adopted made applicable.

8. In the light of the above, this Court is of the considered view that the relief as sought for in this writ petition cannot be granted especially in the light of the decision of the learned Division Bench and accordingly, the writ petition is dismissed. The connected miscellaneous petitions, if any shall stand closed. No costs.

12.08.2024

Index : Yes/No
Speaking Order : Yes/No
dpa

To:

1.The Secy. to Government,
Government of Puducherry,
Finance Department,
Puducherry.

2.The Dean,
Pandit Jawaharlal Nehru College of Agriculture
And Research Institute,
Karaikal – 609 603.

MUMMINENI SUDHEER KUMAR,J.

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