



W.P.No.27043 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.01.2024

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

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1. S.Balasubramanian M
Junior Assistant
Office of the Chief Engineer Agricultural
Engineering Department, Chennai 600 035
2. K.Ekambaram
Junior Assistant,
Office of the Chief Engineer (AE)
Agricultural Engineering Department
Chennai 600 035
3. P.Agasthiyan
Typist (Retired)
Office of the Joint Director of Agriculture,
Tirunelveli 627 007
4. K.Johnson,
Driver, Office of the Assistant Executive Engineer, (AE)
Agricultural Engineering Department,
Tirunelveli 627 007
5. M.Nagaraj
Record Clerk (retired)
Office of the Joint Director of Agriculture,
Vellore 632 002
6. C.Sankaran,
Driver, (Retired)
Office of the Assistant Executive Engineer(AE),
Agricultural Engineering Department,
Coimbatore -6



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7. G. Angu Selvan,
Junior Tractor Doser Driver,
Office of the Assistant Executive Engineer (AE).
Agricultural Engineering Department Sivagangai 630561
8. K.Narasimman
Cleaner,
Office of the Assistant Executive Engineer (AE)
Agricultural Engineering Department,
Madhuranthagam 603 306
9. S. Ramesh
Junior Tractor Driver
Office of the Assistant Executive Engineer (AE)
Agricultural Engineering Department
Cuddalore 607 006
10. A.Kothandan
Office Assistant,
Office of the Director of Horticulture
Chepauk, Chennai 600 005
11. M. Valarmani
Junior Tractor Driver
Office of the Assistant Executive Engineer (AE).
Agricultural Engineering Department,
Kuzhthalai, Karur District 639 104
12. M. Mohammed Dasthakir,
Office Assistant Office of the Horticulture
Chepauk Chennai 600 005
13. J. Krishna Bhadur,
Watchman
Office of the Director of Agriculture
Chepauk, Chennai 600 005
14. M. Balu,
Driver,
Office of the Director of Agriculture,
Chepauk, Chennai – 5.



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15. M.Srinivasan,
Junior Tractor Doser Driver,
Office of the Assistant Executive Engineer (AE),
Agricultural Engineering Department
Karur 639 110
16. E.Balaji,
Telephone Operator,
Agricultural Engineering Department
Karur 639 110
17. R. Sudharshan
Typist,
Office of the Director of Agriculture,
Chepauk, Chennai 600 005
18. K.Chandramohan
Junior Assistant,
Office of the Assistant Executive Engineer (AE)
Madurai 625 011
19. A.Sundararaju,
Junior Assistant,
Joint Director of Horticulture,
Salem 636 302
20. K.R.Manickam
Driver,
Office of the Executive Engineer,
Agriculture Department, Dharmapuri 636 705
21. M.Devaki
Typist,
Office of the Joint Director of Agriculture,
Thanjavur 613 007
22. C.Mani
Tractor Driver,
Office of the Assistant Executive Engineer (AE)
Karur 639 004



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23. R Rajendran

Junior Assistant,
Office of the Superintending Engineer, (AE)
Agriculture Engineering Department
Trichy 620 020

24. J.Theerthagiri

Junior Tractor Driver,
Office of the Assistant Executive Engineer,
Agricultural Engineering Department,
Dharmapuri 636 705

25. T.Sabari Meenakshi

Office Assistant,
Office of the Joint Director of Agriculture,
Tiruunveli 627 007

..... Petitioners

Vs-

1. State of Tamil Nadu,

Represented by Agricultural Production Commissioner
and Principal Secretary to Government,
Agriculture Department,
Secretariat, Chennai 600.009

2. The Registrar of Agro Engineering Services

/ Director of Agriculture,
Chepauk, Chennai 600 005

3. The Director of Agriculture,

Chepauk, Chennai 600 005

4. The Liquidator,

Tamil Nadu Agro Engineering Service Co-operative
Federation (Agrofed)

53, Thiruvika Nagar, Chennai 600 096

... Respondents



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Writ Petition filed under Article 226 of Constitution of India for

issuance of a Writ of Mandamus directing the Respondents to consider the claim of the Petitioners with regard to modification in G.O.Ms No. 185 Agriculture (AE2) Department dated 21.07.2017 issued by the First Respondent to the limited extent by deleting conditions imposed therein that the appointment shall be deemed to be considered as fresh appointment and that the period of services prior to the said appointment will not be taken into account for the purpose of seniority and other benefits and to pass orders directing the Respondents herein and pass appropriate orders in the Tamil Nadu Agro Engineering Service Co Federation (Agrofed) to take into account 50% of the entire services from the respective dates of the initial appointment of the Petitioners along with regular Government Service by declaring that the Petitioners are deemed be in Tamil Nadu Government service with effect from 1.12.2004 with Pay Protection and grant all consequential service and monetary benefits only for the purpose of grant of Pensionary benefits and on that basis to bring the Petitioners under the purview of Tamil Nadu Pension Rules and accordingly grant all consequential benefits to the Petitioners and to pass such further orders.



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For Petitioners : Mr.S.Balakrishnan for
Mr.M.Ravi

For Respondents : Mr.L.S.M.Hasan Fizal
Additional Government Pleader

ORDER

The present Writ Petition is filed for issuance of a Writ of Mandamus directing the Respondents to consider the claim of the Petitioners with regard to modification in G.O.Ms No. 185 Agriculture (AE2) Department dated 21.07.2017 issued by the First Respondent to the limited extent by deleting conditions imposed therein that the appointment shall be deemed to be considered as fresh appointment and that the period of services prior to the said appointment will not be taken into account for the purpose of seniority and other benefits and to pass orders directing the Respondents herein and pass appropriate orders in the Tamil Nadu Agro Engineering Service Co Federation (Agrofed) to take into account 50% of the entire services from the respective dates of the initial appointment of the Petitioners along with regular Government Service by declaring that the Petitioners are deemed be in Tamil Nadu Government service with effect from 1.12.2004 with Pay Protection and grant all consequential service and monetary benefits only for the purpose of grant of Pensionary benefits and on that basis to bring the Petitioners under the purview of Tamil Nadu



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Pension Rules and accordingly grant all consequential benefits to the Petitioners and to pass such further orders.

2. The brief facts of the case is as follows:-

(i) All the Petitioners were initially appointed in their respective posts as mentioned in cause title, i.e., Office Assistant, Junior Assistant, Typist, Driver, Cleaner etc., were all illegally terminated from service by illegal closure and after representations and taking into account certain Judgments, the petitioners have now been reinstated in service by the Government in G.O. Ms No. 185 Agriculture AE (2) Department dated 21.07.2017 but with harsh unjust and unconscionable conditions. In view of the Judgment of the Hon'ble Division Bench of this Court dated 11.10.2017 in W.A. 3438 of 2012, preferred by similarly placed employees and the Judgments of Hon'ble Supreme Court in identical matters, the Petitioners have preferred Joint representation against the stringent conditions and have prayed for proper and just order of regular absorption. As their joint representation have failed to evoke any response to the Petitioners are filing this single Writ Petition.

(ii) The Petitioners No. 1 to 12 had already filed W.P. No 16334 of 2016 before this Court seeking directions to Respondents 1 and 2 to



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consider their representations in the light of relevant Government Orders issued in G.O. No.116 Labour and Employment (P2) Department 06.08.2015 for regular absorption in any available vacancies. This Court in and by order dated 28.04.2016 directed the Respondents to consider the representations in the light of the said Government orders on merits and in accordance with law within a period of 8 weeks from the date of receipt of the said order. The First Respondent herein in pursuance to the aforesaid directions of this Court, have issued G.O. Ms.No. 185 Agriculture AE(2) Department dated 21.07.2017 not only covering the Petitioners who preferred W.P. No. 16334 of 2016 but also all the Writ Petitioners herein and other similarly placed persons, In view of the above said order, they issued relaxation of the relevant Rules and appointed all the Writ Petitioners herein in the appropriate posts and imposed certain conditions with reference to the appointment. While the absorption in the respective posts which has already held, is in compliance with the Orders of the Hon'ble Supreme Court of India and the directions issued by this Court, the conditions imposed with reference to the appointment are harsh, unjust, stringent and unconscionable and have exposed the petitioners to serious prejudice and grave mental agony. Instead of regular absorption, the appointment has been declared as fresh appointment and also it has been



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declared that the seniority can be claimed only from the date of joining in Agriculture /Agricultural Engineering Department. It has also been stated that issue of counting the past service rendered by us in Tamil Nadu Agro Engineering and Service Co-operative and Federation Limited (Agrofed) at the time of superannuation will be examined separately since Agrofed is a non pensionable organization.

(iii) In fact, in respect of Junior Assistant/Typist, Steno typist, it has also been directed to obtain concurrence from TNPSC prior to regularization of our services. Thus the Petitioners herein who have rendered service for nearly 12 years prior to illegal closure, who were exposed to untold grave hardship stagnation of services for nearly 13 long years have been issued with an order of fresh appointment and that too with a condition that our earlier services and the period after illegal closure before the reinstatement will not at all be taken into consideration for the purpose of seniority, pay protection any other service or monetary benefits.

3. The learned counsel for the petitioners reiterated the facts stated in the petition and pleaded to allow the present petition.



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4. On the other hand, a detailed counter affidavit has been filed by the respondents by contending that the Writ petition is not at all maintainable either in law or on the facts of the case, thereby seeks to dismiss the petition. The petitioners had worked as Junior Assistant in the Tamil Nadu Agro Engineering and Services Co-operative Federation Ltd, Chennai, a Co-operative Society registered under the Tamil Nadu Co operative Societies Act, 1983 (hereinafter mentioned as the "Federation"). The affairs of the Federation became dismal and precarious and it was found that there was no scope for its revival, hence, the Government of Tamil Nadu, directed the 2nd respondent herein to invoke Section 137 of the Tamil Nadu Co-operative Societies Act, 1983 to wind up the "Federation", vide G.O.Ms.No.395, Agriculture Department, dated 27.11.2002 in pursuant to the above said G.O., the "Federation" was ordered to be liquidated with effect from 30.11.2004. Prior to the above said order, the "Federation" issued notice of closure, dated 28.10. 2004 to the staffs including the petitioners herein with effect from 30.11.2004 under Section 25FFF of the Industrial Disputes Act, 1947.

5. The learned Additional Government Pleader appearing for the respondents also submits that thereafter, the Government had sanctioned



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loan for the purpose of payment of Retrenchment benefits to the staffs including the petitioners herein. The staffs including the petitioners have received the terminal benefits, retrenchment compensation and other benefits and the Government have also sanctioned a loan of Rs.15,60,25,000/- vide GO.Ms No.303, Agriculture Department dated 15.11.2005 for the payment of closure compensation and other terminal benefits to 384 employees of the Federation, as per the Vth Pay Commission recommendation. Subsequently, the Government have also sanctioned a loan of Rs 6,40,12,000/- for difference of terminal benefits as per the VIth Pay commission. These amounts were disbursed to all the 384 retrenched employees of Federation including the petitioners. It is also submitted that based on field reports, the Federation calculated the compensation amount taking into account the following benefits as per the V and VI pay Commission recommendation such as,

- 1.Retrenchment Compensation
- 2.Ex-Gratia
- 3.Gratuity
- 4.Leave Salary
- 5.Arrears Salary
- 6.EPF Employer's Contribution up to 30.11 2004 i.e, closure of the Federation.



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6. Besides the above, the learned Additional Government Pleader also contends that the petitioners have accepted the notice of closure of the Federation issued under section 25 FFF of the Industrial Disputes Act, 1947. The petitioners have also submitted the option letter to the 4th respondent accepting to the post as applicable, per the government rules and guidelines of the employment. In the mean time, Government has taken steps to accommodate the eligible retrenched employees into service. Further, even after the compensation being received and having been pointed in Government service as claimed, now, these petitioners have preferred this Writ Petition which is not maintainable in the eye of law and the same may liable to be dismissed with exemplary costs.

7. Further, this Court, on earlier occasion, disposed of the W.P. No. 16334 of 2016 filed by the petitioners and others on 28.04 2016 with the direction to the respondents to consider the representation of the petitioners in the light of the orders issued in GO Ms.No. 116, Labour and Employment Department, dated 06.08.2016 and 13.04.2018 on merits and in accordance with law. Consequent to the above orders, Government considered their representation sympathetically and identified the vacant posts based on their qualifications and passed orders in GO.Ms. No 185



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Agroton Department, dated 21.07.2017. Accordingly, 45 non-technical retrenched employees including the petitioners were appointed in the suitable posts based on their qualifications with certain conditions specified in G.O.Ms. No. 185, Agriculture Department dated 21.07.2017 after relaxing necessary rules regarding age, etc, to their favour, Immediately on receipt of the orders of Government, the petitioners and others had joined duty without any objection at that time. After receipt of all the closure compensation and other terminal benefits etc, for the services rendered in non pensionable organisation joined to Government service afresh and served, however, after a period of one year, now, the petitioners have filed this writ Petition claiming pension, seniority and pay protection etc., which is bad in law.

8. Moreover, the Government issued GO. Ms. No. 385, Agriculture Department dated 27.11.2002 to close down the business operation of the Federation, since it was not able to pay salaries to the Employees for about 30 months from 01.04.2004 and all its 370 employees including Thiru K.Kannan, Thiru R. Alagesan, Thiru A. Velsami and including the Petitioners herein. They approached this Court by filing writ petitions collectively and individually challenging the closure of the Federation. This Court dismissed some of the writ petitions and in certain cases issued



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directions to consider the representation of the petitioners. This Court dismissed the writ petition filed by Thiru K.Kannan challenging the closure of the Federation. Aggrieved by the orders of the Single Judge, Thiru K.Kannan, filed W.A.No. 348 of 2012. The Division Bench of this Hon'ble Court, while allowing the writ appeal, directed interalia that at the time of appointing the petitioner (Thiru K.Kannan) by means of redeployment in any existing vacancy in any one of the Government departments and the first respondent was directed to take into account of the retrenched compensation and to pass appropriate orders thereto recovering the same in the manner known to law. In a similar case, Thiru. R. Alagesan and Thiru A Velkami, the retrenched employees of the Federation, filed Special Leave Pention (C) 12121 of 2011 before the Hon'ble Supreme Court against the final judgment and order dated 10.11.2010 in WA No 254 of 2010. The Hon'ble Supreme Court disposed of the Special Leave Petition (C) 12121 of 2011 on 11.05.2010 with the following directions:-

“(i) 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 9 May, 2016. If the petitioners so join, the period of service rendered by them in Tamil Nadu Agro Engineering and Service Co-operative Federation 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.



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(ii) 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.

(iii) 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 Rule, 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."

9. Besides the above, it is the averment put forth on behalf of the respondents is that in compliance with the orders of the Hon'ble Supreme Court, Thiru. R Alagesan and another were appointed vide G.O.Ms.No.121 Agricultural Department dated 03.05.2017, after relaxing the relevant rules, namely the method of appointment and the issue of counting the past service rendered by them in the federation for terminal benefits as ordered by the Hon'ble Supreme court and the issue of counting the past service rendered by them in the Federation to benefits as ordered by the Hon'ble Supreme Court will be examined separately, In the same analogy, on receipt of the orders of this Court, the request Petitioners were considered sympathetically and the petitioners were appointed vide G.O.Ms. No 185. Agriculture Department dated 21.07.2017. As ordered by the Hon'ble



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Supreme Court, it has been specifically mentioned in the said GO, that the counting of past service rendered by them in Tamil Nadu Agro Engineering and Service Co-operative Federation Limited (AGRO FED) terminal benefits will be examined separately. Hence, there is no need to modify the orders issued by the Government.

10. Further, the issue involved in this case is different from the case law referred to by the petitioners. As per the Larger Bench decision in Marappan case (2006 (4) CTC 688), this Writ Petition is not maintainable at the outset. After receipt of all the closure compensation and other terminal benefits etc., for the services rendered in non pensionable organisation, Government considered their representation sympathetically and identified the posts based on their qualifications and passed orders in G.O.Ms. No. 185, Agriculture Department, dated 21.07.2017. After receipt of all the above retrenchment benefits, this petition filed by the petitioners for modification of the said Government Order is without any bonafide reasons.

11. Heard the learned counsels on either side and perused the documents placed on record carefully.



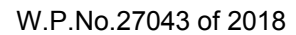
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12. Admittedly, it is not in dispute that the petitioners had worked as Junior Assistant in the Tamil Nadu Agro Engineering and Services Co-operative Federation Ltd, Chennai, a Co-operative Society registered under the Tamil Nadu Co operative Societies Act, 1983 (hereinafter mentioned as the "Federation").

13. It is relevant to note that since the affairs of the Federation were found not satisfactory and that there was no scope for its revival, the Government of Tamil Nadu, directed the 2nd respondent herein to invoke Section 137 of the Tamil Nadu Co-operative Societies Act, 1983 to wind up the "Federation", vide G.O.Ms.No.395, Agriculture Department, dated 27.11.2002 in pursuant to the above said G.O., the "Federation" was ordered to be liquidated with effect from 30.11.2004. Prior to the above said order, the "Federation" issued notice of closure, dated 28.10. 2004 to the staffs including the petitioners herein with effect from 30.11.2004 under Section 25FFF of the Industrial Disputes Act, 1947.

14. It is to be noted that the staffs of the Federation including the petitioners have received the terminal benefits, retrenchment compensation



15. When the petitioners have accepted the notice of closure of the Federation, [which is non-pensionable organisation] issued under section 25F of the Industrial Disputes Act, 1947 and received all the retirement benefits and submitted their option letters to the 4th respondent accepting the post as applicable, as per the government rules and guidelines of the Government and that the Government has taken steps to accommodate eligible retrenched employees into service, this writ petition preferred by these petitioners stating that they have been illegally terminated and the closure of the Federation is totally wrong and not maintainable in the eyes of law.



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16. It is pertinent to point out that after receipt of all the closure compensation and other terminal benefits etc., for the services rendered in non pensionable organisation, Government considered the petitioners representation sympathetically and identified the posts based on their qualifications and passed orders in G.O.Ms. No. 185, Agriculture Department, dated 21.07.2017. After receipt of all the above retrenchment benefits, this petition filed by the petitioners for modification of the said Government Order is without any bonafide reasons.

In view of the above said facts and circumstances of the present case, the present Writ Petition is liable to be dismissed. Accordingly, the same is dismissed. No costs.

03.01.2024

Index : Yes/No;
Internet : Yes/No
Speaking /Non-Speaking Order
ssd



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To

1. State of Tamil Nadu,
Represented by Agricultural Production Commissioner
and Principal Secretary to Government,
Agriculture Department,
Secretariat, Chennai 600.009
2. The Registrar of Agro Engineering Services
/ Director of Agriculture,
Chepauk, Chennai 600 005
3. The Director of Agriculture,
Chepauk, Chennai 600 005
4. The Liquidator,
Tamil Nadu Agro Engineering Service Co-operative
Federation (Agrofed)
53, Thiruvika Nagar, Chennai 600 096



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V.BHAVANI SUBBAROYAN, J.,

ssd

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