IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13898 OF 2024

1. The Chief Finance Officer,
   Pension Authorizing Authority,
   ICAR – Central Institute for Research
   on Cotton Technology (CIRCOT),
   Mumbai.

   (Changed Address)
   ICAR-Central Institute of Fisheries Education,
   ICAR-Panch Rastra, Off Yari Road,
   Versova, Andheri (West),
   Mumbai – 400 061.
   Represented through ICAR-CIRCOT, Mumbai

2. Indian Council of Agricultural Research
   which is a society Registered under the
   Societies Registration Act, 1860
   Through the Secretary, ICAR as per Rule 23(e)
   of the ICAR Rules and Bye-laws and
   which has authorized the
   ICAR-CIRCOT, Mumbai ...Petitioners

<u>Versus</u>

1. Dr. P. G. Adsule,
   Indian Resident, Aged 72 years,
   Residing at 103, Span-O-life,
   Opp. Sweets India,
   Mio Plaza, EON IT Park, WTC Square,
   Khardi, Pune – 410 014.

2. Union of India,
   The Ministry of Industries,
   New Delhi. ...Respondents

....

Mr. M. S. Topkar a/w Adv. Pavitra Manesh & Bhargavi Patil i/b Pavitra Manesh for the Petitioners.

Mr. L. S. Shetty a/w Niranjan Shimpi and Ms. Juhi Masani i/b Shetty Malhotra & Assco. For Respondent No.1

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CORAM : M. S. KARNIK &
N. R. BORKAR, JJ.

DATE : 13th AUGUST, 2025

JUDGMENT :- (PER M. S. KARNIK, J.)

1. Invoking the jurisdiction of this Court under Article 226 and 227 of the Constitution of India, the Petitioner – ICAR take exception to the judgment and order dated 18th April 2024 passed by the Central Administrative Tribunal ('the Tribunal', for short) in Original Application No.52 of 2016 filed by Respondent No.1.

2. The brief facts of the present Petition are that, on 1st September 1976 Respondent No.1 was appointed as a Scientist Grade-II with the Petitioners - Indian Council of Agricultural Research ('ICAR', for short). Thereafter, Respondent No.1 was appointed as Deputy Director (Food) under Ministry of Industries, Government of India. The Respondent No.1 was relieved with effect from 15th April

1982 to join the new post with effect from 19th April 1982.

3. By an order dated 24th December 1998, Respondent No.1 was selected and appointed to the post of Principal Scientist (Horticulture), ICAR Research Complex, Goa with effect from 1st June 1999. Respondent No.1 requested for release of his pension and other pensionary benefits for services rendered by him from 1976 to 1999. Subsequently, Respondent No.1 was selected as Director at ICAR-NRCG (Food), Pune with effect from 26th April 2005, from which post he retired on 31st May 2013.

4. Upon retirement, during scrutiny of the proposal of the Respondent No.1, it was revealed that Respondent No.1 was already receiving pension from his earlier employer i.e. Respondent No.2 – Union of India. Respondent No.2 vide letter dated 11th June 2013 informed the Petitioners about the said fact. Respondent No.1 was informed that his services from 1st June 1999 to 31st May 2013 would be treated as re-employed pensioner and his pay would be re-fixed in accordance with the rules governing pay fixation. It was further informed that Respondent No.1 would be entitled to other benefits as admissible to the retired personnel on re-employment and that excess amount paid to Respondent No.1 would be recovered from his dues.

5. Aggrieved by the decision of the Petitioners, Respondent No.1 approached the Tribunal. The Tribunal by the impugned judgment and order allowed the Original Application and directed the Petitioners not to treat the employment of Respondent No.1 from 1st June 1999 to 31st May 2013 as re-employment but to treat it as continuous service rendered by him from 1st September 1976 to 31st May 1999 without any break as well as with all consequential benefits in accordance with the pension rules subject to the Respondent No.1 depositing his pensionary benefits received by him at the time of his relieving from Ministry of Industries on 31st May 2013 along with interest at the rate payable on GPF.

6. Learned counsel for the Petitioners submitted that the period from 1st September 1976 to 31st May 1999 was treated as continuous service and upon an application received from Respondent No.1 the pensionary benefits were released by Respondent No.2. Learned counsel submitted that this fact was concealed by Respondent

No.1 with ulterior motive as the Respondent No.2 was not even made a party to the Original Application initially. This according to the Petitioners is a material suppression of fact. It is submitted that the Respondent No.1 having received pension for his past service becomes disentitled to claim pension again for the entire service and in such view of the matter, his service for the period post pensionable service has to be as that of a re-employed pensioner and his pay has to be fixed in accordance with the Rules governing pay fixation. It is submitted that the Tribunal was in error in holding that Respondent No.1 had kept his lien on the post in the Ministry of Industries. It is further submitted that Respondent No.1 was appointed on probation for two years by the Petitioners and thereafter he was absorbed and hence there was no question of Respondent No.1 keeping lien after being relieved by the Ministry of Industries. It is vehemently submitted by Mr. Topkar, learned counsel for the Petitioners that Respondent No.1 having claimed and received pensionary benefits for the past services, his appointment as a Principal Scientist is a case of re-employed pensioner. It is submitted that the Tribunal overlooked Rule 7(2) of the

Central Civil Services Pension Rules, 1972 which provides that a government servant, who has retired on superannuation pension or retiring pension, if subsequently re-employed shall not be entitled to separate pension or gratuity for the period of this re-employment.

7. Learned counsel for Respondent No.1 on the other hand argued in support of the findings of the Tribunal. Our attention is invited to the findings of the Tribunal to contend that the Tribunal has taken a view that advances the cause of justice which does not warrant any interference in the exercise of writ jurisdiction of this Court.

8. Heard learned counsel for the parties. We have perused the pleadings, the materials on record and the order passed by the Tribunal.

9. Respondent No.1 received the pensionary benefits for the period 1^{st} September 1976 to 31^{st} May 1999. From 1^{st} June 1999 to 31^{st} May 2013 the Petitioner – ICAR wants that the Respondent No.1 be treated as a re-employed pensioner. As stated earlier, the argument is that the Respondent No.1 has received the pensionary benefits for the past services. Moreover, it is contended by the petitioners that the Respondent No.1 suppressed the fact of receipt of the pensionary benefits, instead, claimed that the service from 1st September 1976 to 31st May 1999 be treated as continuous service without any break.

10. But for receipt of the pensionary benefits for the past services, there is no dispute that this period would have been treated as a continuous service for the purpose of pensionary benefits. While processing the pension of the Respondent No.1, the Petitioners realised that Respondent No.1 was already in receipt of a pension for the past service which he now wants to be treated as a continuous service, and therefore the Respondent No.1 was treated as a re-employed pensioner and the pensionary dues fixed accordingly. Moreover, according to the petitioners the Respondent No.1 has suppressed the fact of receipt of the pension.

11. The argument of the learned counsel for the Petitioners is attractive. However, in the peculiar facts of the present case we hesitated to interfere with the order passed by the Tribunal. Undoubtedly, the Respondent No.1 ought to have been cautious and informed the factum of receipt of pension for the past services he had rendered. As indicated earlier, and since there is a provision in the Service Rules for depositing the pensionary benefits received by the Respondent No.1 at the time of his relieving from the earlier employment along with interest, we are loathe to interfere with the Tribunals order.

12. We must indicate what weighed with us in swaying our opinion in favour of Respondent No.1. The Respondent No.1 is a Scientist. A Scientist is a powerful architect of the nation’s future, driving innovation and progress. This Court has to be mindful not only the technical aspects of service jurisprudence but also of the larger professional and human realities that shape the life of a Scientist. There is nothing on record to indicate any blemish on the part of Respondent No.1 in the discharge of his duties as a Scientist. The core function that he had to discharge was always that of a Scientist, in the field of agriculture. His role assumes a dimension far beyond personal service - it strengthens the pillars of food security, rural livelihood and economic growth. The primary duty of a Scientist lies in research, experimentation and innovation. His world is a laboratory and the field, not the corridors of administration. It is neither fair nor practical to expect him to navigate complex service rules, lien procedures, or pension options without assistance. That obligation rests on the employing organization, which must ensure clarity, guidance and preservation of the rights of the employee such as the Respondent No.1. It is often said that the law, in its true sense, is not a mechanical code but a living instrument. It must breathe with justice and resonate with empathy for lived realities. We must be mindful of the broader principle that the progress of a nation rests less on its material wealth and more on its intellectual capital. Scientists, as custodians of knowledge and innovation, deserve the assurance that their devotion will not be undermined by bureaucratic rigidity. In the present case, justice, therefore, demands not only the redress of individual grievance but also the reaffirmation of the society's duty to honour those who dedicate their lives to the advancement of knowledge and welfare of the nation. In a given case we would not have hesitated to interfere with the order of the Tribunal. It may be that the Respondent

No.1 did not inform the fact of him having received the pensionary benefits. The same was not intentional. More than 35 years of unblemished service rendered by the Respondent No.1 far outweighs the concern expressed by the Petitioners about the Respondent no.1's conduct.

13. It is the contention of learned counsel for the Respondent No.1 that his appointment with ICAR from 1st June 1999 to 31st May 2013 can never be said to be by way of reemployment and, therefore, his entire service period from 1st September 1976 to 31st May 1999 has to be taken into consideration for full retirement benefits. The Respondent No.1 at no point of time filed any pension papers signed by him seeking payment of pension and pensionary benefits in connection with the service rendered by him from 1st September 1976 to 31st May 2013. It is the office of the Development Commissioner who requested the office of the Director, ICAR Research Complex, Goa to make available his service book and leave account which was sent to him. The accounts authorities of the office of the Development Commissioner including the Central Pension Accounting Office issued a Pension Payment Order in favour of the Respondent no.1

for payment of monthly pension.

14. By the impugned letter dated 25th August 2014, which made a reference to Rule 7(2) of the Pension Rules, the second Respondent conveyed its decision of non-entitlement of pension and pensionary benefits to the Respondent No.1. In the submission of the learned counsel for the Respondent No.1 that the Respondent No.1 has neither taken voluntary retirement nor he has been compulsorily retired. The Respondent No.1 is also not declared surplus as provided in Rule 36(2) of the Pension Rules. Learned Tribunal has placed reliance on OM dated 29th August 1984 issued by the Department of Personnel and Administrative Reforms, Ministry of Home Affairs, particularly, para 3 and 5, which read thus :-

> *"3. This matter has been considered carefully and the President has now been pleased to decide that the case of Central Government employees going over to a Central autonomous body or vice-versa and employees of the Central autonomous body moving to another Central Autonomous body may be regulated as per the following provisions:*
>
> > *(a) In case of Autonomous Bodies where Pension Scheme is in operation.*
> >
> > *(i) Where a Central Government employee borne on pensionable establishment is allowed to be absorbed in an autonomous body, the services rendered by him under the Government shall be allowed to be counted towards pension under the*

autonomous body irrespective of whether the employee was temporary or permanent in Government. The pensionary benefits will, however, accrue only if the temporary service is followed by confirmation. If he retires as a temporary employee in the autonomous body, he will get terminal benefits as are normally available to temporary employees under the Government. The same procedure will apply in the case of employee of the autonomous bodies who are permanently absorbed under the Central Government.

The Government / autonomous body will discharge its pension liability by paying in lumpsum as a one-time payment, the pro-rata pension/service gratuity/terminal gratuity and DCRG for the service upto the date of absorption in the autonomous body/Government, as the case may be. Lumpsum amount of the pro-rata pension will be determined with reference to commutation table laid down in CCS (Commutation of Pension) Rules, 1981, as amended from time to time.

(iii) A Central Government with CPF benefits on permanent absorption in an autonomous body will have the option either to receive CPF benefits which have accrued to him from the Government and start his service afresh in that body or choose to count service rendered in Government as qualifying service for pension in the autonomous body by foregoing Government's share of CPF contributions with interest, which will be paid to the concerned autonomous body by the concerned Government Department. The option shall be exercised within one year from the date of absorption. If no option is exercised within stipulate period, employee shall be deemed to have opted to receive CPF benefits. The option once exercised shall be final.

(b) Autonomous body where the Pension Scheme is

not in operation.

> *(i) A permanent Central Government employee borne on pensionable establishment, on absorption under such autonomous body will be eligible for pro-rata retirement benefits in accordance with the provisions of the Ministry of Finance O.M. No. 26(18)EV(B)/75 dated 8th April, 1976, as amended from time to time. In case of quasi-permanent or temporary employees, the terminal gratuity as may be admissible under the rules would be actually payable to the individual on the date when pro-rata retirement benefits to permanent employees become payable. However, in the case of absorption of a Government employee with CPF benefits, in such an autonomous organisation, the amount of his subscriptions and the Governments' contribution, if any, together with interest thereon shall be transferred to his new Provident Fund account with the consent of that body.*
>
> *(ii) An employee of an autonomous body on permanent absorption under the Central Government will have the option either to receive CPF benefits which have accrued to him from the autonomous body and start his service afresh in Government or choose to count service rendered in that body as qualifying service for pension in Government by foregoing employer's share of Contributory Fund contributions with interest thereon, which will be paid to the concerned Government Department by the autonomous body. The option shall be exercised within one year from the date of absorption. If no option is exercised within stipulated period, employee shall be deemed to have opted to receive CPF benefits. The option once exercised shall be final.*

(c) Absorption of employees of one Central Autonomous body to another Central Autonomous body. The above procedure will be followed mutatis mutandis in respect of employees going from one autonomous

body to another.

> *5(1) The employees of a Central autonomous body or Central Government, as the case may be, who have already sanctioned or have received pro-rata retirement benefits or other terminal benefits for their past service will have the option either:-*
>
> *(a) to retain such benefits and in that event their past service will not qualify for pension under the autonomous body or the Central Government, as the case may be: or*
>
> *(b) to have the past service counted as qualifying service for pension under the new organisation in which case the pro-rata retirement or other terminal benefits, if already received by them, will have to be deposited alongwith interest thereon from the date of receipt of those benefits till the date of deposit with the autonomous body or the Central Government, as the case may be. The right to count previous service as qualifying service shall not revive until the whole amount has been refunded. In other cases, where pro-rata retirement benefits have already been sanctioned but have not yet become payable, the concerned authorities shall cancel the sanction as soon as the individual concerned opts for counting of his previous service for pension and inform the individual in writing about accepting his option and cancellation of the sanction. The option shall be exercised within a period of one year from the date of issue of those orders. If no option is exercised by such employees within the prescribed time limit, they will be deemed to have opted for retention of the benefit already received by them. he option once exercised shall be final."*

15. In terms of clause 5(1) of the aforesaid OM, an option is available to the Respondent No.1 for counting his services from 1st June 1999 to 31st May 2013 for the purpose of pension by surrendering his earlier pension granted by the Ministry of Industry.

16. Learned Tribunal then placed reliance on the OM dated 12th September 1985, OM dated 31st March 1987 and OM dated 26th July 2005, which read thus :-

" ***OM dated 12th September, 1985***

The undersigned is directed to say that in accordance with para-5 (1) (b) of this Department's Office Memorandum of even number dated 29th August, 1984 an employee of the Central autonomous body or the Central Government who has already received pro-rata retirement benefits or other terminal benefits for his past service will have the option to have the past service counted as qualifying service for pension under the new organisation. In such a case the pro-rata retirement benefits or other terminal benefits, if already received by him will have to be deposited with interest thereon from the date of receipt of these benefits till the date of deposit with the autonomous body or the Central Government as the case may be.

2. The rate of interest to be paid on the amount to be refunded has been engaging the attention of the Government of India. It has been decided in consultation with the Ministry of Finance (Department of Expenditure) that the rate of interest in such cases would be simple interest of 6% per annum.

3. Further, the entire property may be made in the *monthly installments not exceeding thirty-six in number, the first installment beginning from the month following the month in which person concerned exercised option, provided that the entire recovery in installments does not go beyond the actual date of retirement. The right to count the previous service as qualifying service shall not revive until the whole amount has been refunded.*

5. Further, in accordance with para-3(a) of the Office Memorandum No.28/10/84-Pension Unit dated 29th August, 1984 the Government/autonomous body will discharge its pension liability by paying in lumpsum as one-time payment, the pro-rata pension/ service/ gratuity/ terminal gratuity and the DCRG for the service upto the date of absorption in the autonomous body/Government as the case may be. The lumpsum amount of the pro-rata pension will be determined with reference to the commutation table laid down in CCS (Commutation of Pension) Rules, 1981, as amended from time to time. Various Ministries/Departments of the Government of India may accept pension liability in all these cases where Central Government employees move to <u>Central autonomous bodies with proper permission and discharge the same in the prescribed manner. For their purpose 'proper permission' means that Government servant applied for the post in autonomous body through 'proper channel' and he resigns with due intimation that he is doing so to take up assignment in autonomous body or the Government servant is relieved of his duties by the Government Departments. Office to take up assignment in an autonomous body. Pension liability may also be accepted in past service provided the Government servant took up the assignment in autonomous body with proper permission.</u> The Ministry of Defense etc. may please issue specific directions to their Financial Advisers to advise the autonomous / statutory bodies under their administrative control to make the above provisions in their rules and regulations. In cases where any *practice other than mentioned above is presently being followed, the same may be revised in accordance with these decisions and that they may also provide for acceptance of pension liability for the past service.*

<u>OM dated 31.03.1987</u>

(ii) Those absorbed in the autonomous bodies having pension scheme shall have an option to receive pro-rata retirement benefits or continue to have the benefit of combined service under the Government and in the autonomous body subject to the conditions laid down in the Department of Personnel and AR's OM No.28/10/84-PU dated the 29th August, 1984 and 12th September, 1985. Such option should be exercised within six months from the date of permanent absorption. In case no option is exercised within stipulated period, he will be eligible for pension based on combined service.

(iii) Encashment of earned leave shall be admissible upto the maximum limit of 240 days. Half pay leave will stand forfeited.
....

3. All cases of grant of pensionary benefits etc., to Government servants who are appointed in the Central Autonomous Bodies on immediate absorption basis shall be decided by the Administrative Ministries/Cadre Controlling Authorities/Authorities competent to accept resignation of a Government servant in accordance with provisions of this O.M.

<u>OM dated 26th July, 2005</u>

(ii) The employees who entered into service on or before 31.12.2003 and who were governed by CPF scheme or any pension scheme of Central or State Government, other than the pension scheme under Central Civil Services (Pension) Rules, 1972 on submission of technical resignation to take up new

appointment on or after 1.1.2004, cannot be allowed to join the old pension scheme under Central Civil Services (Pension) Rules, 1972 because entry to the said scheme ceased w.e.f 31.12.2003 and no new entry can be allowed in the pension scheme under above rules. However, such employees can seek pensionary/terminal benefits, from the previous organisation/Department, if admissible under the rules of that organisation/Department, for the period of service rendered under that organisation / Department".

17. The Respondent no.1 has put in continuous service of 36 years and 9 months and he had lien in the ICAR when he joined the Ministry of Industry holding a substantive post before he joined as Principal Scientist (Horticulture) with the ICAR, Goa. The Respondent no.1's entire service of 36 years and 9 months is continuous service.

18. We have carefully perused the reasoning of the learned Tribunal so far as retention of the lien for appointment in other Central Government Office / State Government Office is concerned. The Respondent no.1 was permanent employee of Ministry of Industry and holding a substantive post before he was appointed as Principal Scientist (Horticulture) in the ICAR, Goa Campus. It is pertinent to refer to the appointment letter dated 24th December 1998 issued by the Deputy Director (P), ICAR for the post of Principal Scientist on certain conditions. Condition No.6 reads thus :-

> *"6. He will be on probation for a period of 2 years from the date of appointment which may be extended or curtailed at the discretion of the competent authority. Failure to complete the period of probation to the satisfaction of the competent authority will render him liable to reversion to his present post substantively held by him in ARS."*

19. In the acceptance letter dated 31st December 1998 in para (i), the Respondent no.1 specifically mentioned that since he was a permanent Central Government Servant, he would like to retain his lien for two years. The Respondent no.1 did not have any lien on his new post of Principal Scientist (Horticulture) in ICAR, Goa Campus till completion of his probation. Thus, the Tribunal was, in our opinion, justified in holding that the Respondent no.1 could not be left without a lien in the Ministry of Industries when he tendered technical resignation. Even the contention of the petitioners that the Ministry of Industries was not aware of the Respondent no.1's appointment to the post of Principal Scientist with the ICAR, Goa deserves to be rejected in view of the relieving order dated 28th May 1999 issued by the office of the Development Commissioner, Ministry of Industries. In the said letter, it is clearly stated that the Respondent no.1 was relieved of his duties w.e.f. 31st May 1999 (forenoon) to enable him to report for duty in his new assignment of ICAR, Research Complex, Goa. The contention of the petitioners that the Respondent no.1 did not inform the Ministry of Industries about his appointment with ICAR, therefore, deserves to be rejected, and we do not find any error in the view taken by the Tribunal.

20. In such view of the matter, we have no hesitation in agreeing with the well reasoned order of the Tribunal. The Tribunal has, while granting the aforesaid benefit, made it subject to the Respondent no.1 deposit his pensionary benefits received by him at the time of his relieving from the Ministry of Industries along with interest at the rate payable on GPF. This is in consonance with what is provided by the Rules/OM'S.

21. For the aforesaid reasons, the order of the Tribunal does not warrant any interference.

22. The Writ Petition is dismissed with no order as to costs.

(N. R. BORKAR, J.) **(M. S. KARNIK, J.)**