



WEB COPY

WP No. 15256 of 20



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25-03-2025

CORAM

THE HONOURABLE MS JUSTICE R.N.MANJULA

WP No. 15256 of 2018

AND

**WMP NO. 40235 OF 2018, WMP NO. 18088 OF 2018, WP NO. 34438 OF
2018, WP NO. 34689 OF 2018**

1. Dr.K.Paramasivam,
S/o.N.Krishnasamy, No.201, Fern
Spring, RWD Palm Garden, Gayathri
Nagar, Medavakkam, Chennai.

Petitioner(s)

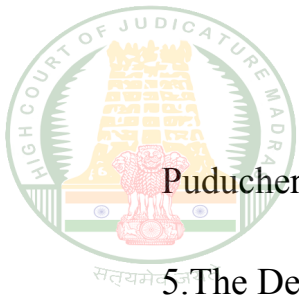
Vs.

1. The Registrar,
Tamil Nadu Agricultural University,
(TNAU), Coimbatore.

2.The Chief Secretary cum
Chairman, (PAJANCOA) Society,
Govt. of Puducherry, Union Territory of
Puducherry.

3.The Chief Secretary,
Govt. of Puducherry, Union Territory of
Puducherry.

4.The Secretary to Agriculture
Govt. of Puducherry, Union Territory of



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Puducherry.

5. The Dean,

Pandit Jawaharlal Nehru College of
Agricultural and Research Institute
(PAJANCOA and RI) Karaikkal,
Union Territory of Puducherry

Respondent(s)

WP No. 34438 of 2018

1. Dr.P.Nasrudeen
S/o.K.S.Pathusha Mohideen, No.3,
Gems Par, Aanaipillai Maricar Street,
Karaikal, Union Territory of
Puducherry.

Petitioner(s)

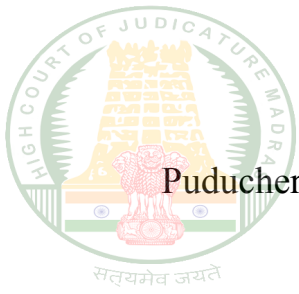
Vs.

1. The Registrar,
Tamil Nadu Agriculture University
(TNAU) Coimbatore

2. The Chief Secretary
Cum Chairaman (Pajancoa) Society,
Govt. of Puducherry, Union Territory of
Puducherry.

3. The Chief Secretary,
Govt. of puducherry, Union Territory of
Puducherry.

4. The Secretary of Agriculture,
Govt. of Puducherry Union Territory of



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5. The Dean.

Pandit Jawaharlal Nehru College of
Agriculture Research Institute,
(Panjancoa and RI) Karaikal, Union
Territory of Puducherry.

Respondent(s)

WP No. 34689 of 2018

1. Dr. V.Chellamuthu
S/O. V.Vellaichamy NO 44 2nd cross
street Kamban nagar Keezhakasakudi
kottucherry post Karaikal Union
territory of Puducherry

Petitioner(s)

Vs

1. The Registrar
Tamil Nadu Agricultural University
Coimbatore

2. The chief Secretary cum chairman
(PAJANCOA) Society Govt of
Puducherry Union Territory of
Puducherry

3. The Chief Secretary
govt of Puducherry Union territory of
Puducherry

4. The secretary of Agriculture
Govt of Puducherry Union Territory of



5. The Dean Pandit

Jawaharlal Nehru college of agriculture
Research insititute (PAJANCOA AND
R1) Karaikal Union of Territory of
Puducherry

Respondent(s)

WP No. 15256 of 2018

PRAYER: Writ petition is filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus to call for the records relating to the impugned order passed by the 1st respondent in Proc.A1/2213/ 2004 dated 22.01.2010, Proc. No.A1/2213/2004 dated 26.12.2013 passed by the 1st respondent and Proc.No.A1/2213/2004 dated 01.09.2016 passed by the 1st respondent and consequential rejection order passed by the 1st respondent in No. R2/BM/166/ VIII-7/ 13 dated 10.12.2013 and quash the same as illegal and further direct the 1st respondent to transfer the pro-data pension to the petitioner and direct the 5th respondent to pay the full pension to the petitioner.

WP No. 34438 of 2018

PRAYER: Writ petition is filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus to Call for the records relating to the impugned order passed by the respondent in Proc.No.A1/2213/2004 dated 22/01/2010 and No.A1/2213/2004 dated 26/12/2013 and No.A1/2213/2004 date 01/09/2016 and consequential rejection order passed by the 1st respondent in



No.R2BM/166 /VIII- 7/13 dated 10/12/2013 and quash the same as illegal and further direct the 1st respondent to transfer the pro-data pension to the petitioner and direct the 5th respondent to pay the full pension to the petitioner.

WP No. 34689 of 2018

PRAYER: Writ petition is filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus to call for the records relating to the impugned order passed by the I respondent in PROC NO A1/2213/2004 dated 22-1-2010 and NO A1/2213/2004 dated 26-12-2013 and NO A1/2213/2004 dated 1-9-2016 respectively and consequential rejection order passed by the first respondent in No R2 BM/166/VII-7/13 dated 10-12-2013 and quash the same as illegal and further direct the first respondent to transfer the pro rata pension to the petitioner and direct the 5th respondent to pay the full pension to the petitioner.

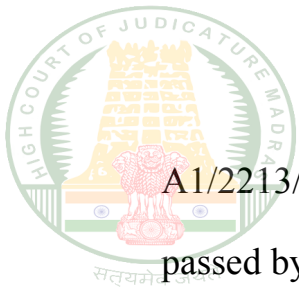
In all petitions:

For Petitioner : Mr.A.Ansar

For Respondent(s): Mr.R.Sivakumar for R1
Mr.R.Syed Mustafa
Special Government Pleader
(Puducherry) for R2 to R5

COMMON ORDER

These writ petitions have been filed to call for the records relating to the impugned order passed by the first respondent in Proc.No. A1/2213/2004 dated 22-1-2010 and Proc.No. A1/2213/2004 dated 26-12-2013 and Proc.No.



A1/2213/2004 dated 1-9-2016 respectively and consequential rejection order passed by the first respondent in No R2 BM/166/VII-7/13 dated 10-12-2013 and quash the same as illegal and further direct the first respondent to transfer the pro rata pension to the petitioner and direct the 5th respondent to pay the full pension to the petitioners.

2. The petitioners were working as Associate Professors in the first respondent University and they intended to join with the fifth respondent after having been selected as Professors in various departments. Until the petitioners were serving with the first respondent, their contributions towards CPS were being made by both employee and the employer.

3. Mr.A.Ansar, the learned counsel for the petitioners, submitted that the despite the petitioners were relieved and they joined with the fifth respondent by obtaining prior permission with the first respondent, their services with the first respondent were not counted for the purpose of the terminal benefits including the pensionary benefit; as the petitioners' representations in this regard were not considered and the impugned orders were passed by rejecting their representation, they have filed these writ petition challenging the impugned order along with prayer for directions.

4. Mr.R.Sivakumar, the learned counsel for the first respondent, submitted that the petitioners' applications for seeking appointment with the fifth



respondent institution have been forwarded by the first respondent on 29.10.1999 itself with certain conditions; one of the essential conditions is that in the event of selection of any post at the fifth respondent institution, the petitioners have to resign their present post holding with the first respondent and they shall not have any right over the present post or service or expected future benefits that may arise of any contingency out of their employment in the University; the further conditions are that the petitioners are not entitled to get re-employment with the first respondent on expiry of the term in the fifth respondent organization and the petitioners shall abide by the decision taken by the University.

4.1 The above proposal has also been sent to the Government for approval and in this regard the first respondent have also passed a resolution in their 153rd Board of Management by reaffirming the condition that the petitioners shall not claim the service benefits for their services rendered with the first respondent and the Government also approved the above decision of the University; the further representation made by the petitioners in this regard has been rejected on account of the earlier decision of the University which have already been conveyed to the petitioners; in this regard the impugned orders have been passed on 10.12.2013, 26.12.2013 and 01.09.2016; despite the main orders denying the service benefits to the petitioners have been passed as early as in the year 2013, the petitioners have not chosen to challenge the same and further they remain silent with regard to the request to furnish their willingness



to remit the pensionary contribution; so the petitioners are not entitled to the relief as claimed.

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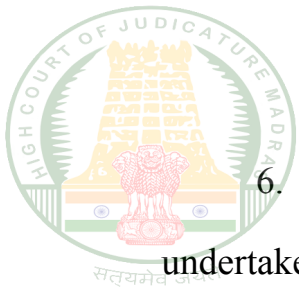
5. There is no dispute of the fact that for the first respondent University, the Tamil Nadu Pension Rules will be applicable. In the event of resignation from a service or a post, Rule 23 of the Tamil Nadu Pension Rules would prescribe that the resignation of the post would entail forfeiture of the past services. One exception to the above Rule is that in case the new assignment has been taken up with a proper permission, whether temporary or permanent, the past services shall not be forfeited. For the sake of convenience, Rule 23 of the Tamil Nadu Pension Rules is extracted hereunder:

“ 23. Forfeiture of service on resignation.

- (1) Resignation from a service or post entails forfeiture of past service:

Provided that a resignation shall not entail forfeiture of past service if it has been submitted to take up with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies.

(2) Interruption in service in a case falling under the proviso to sub-rule (1) due to the two appointments being at different stations, not exceeding the joining time permissible under the rules of transfer, shall be covered by grant of leave of any kind due to the Government servant on the date of relief or by formal condonation to the extent to which the period is not covered by leave due to the Government servant.”



6. Even though the first respondent has permitted the petitioners to undertake their new appointment with the fifth respondent institution, the orders have been passed to the effect of forfeiting their past services which is contrary to Tamil Nadu Pension Rules. An executive order cannot be passed by denying the benefits conferred on the individuals by the Rules. Even while the proposal was sent for the approval of the Government, the Government also failed to notice the proviso to Rule 23 of the Tamil Nadu Pension Rules before approving the stand of the first respondent taken in their 153rd Board of Management.

7. It is true that the petitioners had failed to challenge the earliest communication given to them vide order dated 29.10.1999, 16.12.2009 and 27.05.2010 of the respondents 2 to 5. When these orders are directly in conflict with the Rules, the failure on the part of the petitioners to challenge the same can be of no consequence. In other words, the individuals cannot be denied with the benefit conferred on them through the Rules by any executive orders and their failure to challenge the Rules cannot be held against them. It is for the very reason that the orders passed contrary to the Rules are considered to be non-est in the eye of law.

8. As the petitioners have applied to the new post through the first respondent and have properly relieved from the first respondent University in order to enable them to join with the fifth respondent with continuity of service,



he cannot be denied with the benefit of past services rendered with the first respondent. However, the above benefit is subject to the conditions imposed by the fifth respondent in his letter dated 29.02.2000. The above letter of the fifth respondent would state that the pensionary benefits will be accorded to the petitioners provided they pay their pro-rata pension and terminal gratuity up to their date of joining with the fifth respondent. In the event of pro-rata pension and terminal benefits have already been received by individual, it should be deposited along with the interest from the date of receipt of the said benefits till the date of deposit to the institute. So the petitioners have to comply the direction of the fifth respondent given in this regard.

9. However the learned Special Government Pleader for the fifth respondent submitted that even the individuals are not expected to make any lump sum on pro rata basis and whatever benefit accrued to them in their earlier institute will be settled to them and the fifth respondent's liability to include the appointees under the pension scheme would arise only from the date of their appointment and in accordance with the pension scheme prevailing in the fifth respondent institution.

10. Since the petitioners being the employee of the fifth respondent, they are bound to subject themselves to their Rules and Regulations and these writ petitions have not been filed to challenge any of the proceedings issued by the fifth respondent. But so far as the relief sought by the petitioners against the



fifth respondent seeking direction to pay the full pension to the petitioners, the same would be governed as per the terms and conditions of the scheme and any judicial pronouncements rendered in this regard as against the fifth respondent.

11. In view of the above stated reasons, these Writ Petitions are partly allowed and the impugned orders passed by the 1st respondent in Proc.A1/2213/2004 dated 22.01.2010, Proc. No.A1/2213/2004 dated 26.12.2013, Proc.No.A1/2213/2004 dated 01.09.2016 and Proc. No. R2/BM/166/ VIII-7/ 13 dated 10.12.2013 are hereby set aside and the first respondent is directed to settle the pro-rata pensionary benefits to the petitioners till their date of their resignation and the fifth respondent is directed to include the petitioners under their pension scheme from the date of their appointment and settle the benefits in accordance with their scheme and with the judicial pronouncements, if any, rendered in this regard. No costs. Connected miscellaneous petitions are closed.

25-03-2025

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

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R.N.MANJULA J.

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To

1.The Registrar,
Tamil Nadu Agricultural University,
(TNAU), Coimbatore.

2.The Chief Secretary cum
Chairman, (PAJANCOA) Society,
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