



## ABSTRACT

Agriculture – Employees of erstwhile TANCOF absorbed into the Department of Agriculture - Release of withheld amount of Employer's share of EPF credited into the GPF account of erstwhile TANCOF employees – Sanction accorded - Orders – Issued.

### Agriculture (OS) Department

**G.O.(Ms) No.196**

**Dated: 26.08.2020.**

திருவள்ளூர் ஆண்டு 2051,  
சார்வரி வருடம்,  
ஆவணி திங்கள்- 10 ஆம் நாள்.

**Read:**

- 1 G.O.(Ms) No.142, Agriculture (OS) Department, dated 04.06.2002.
- 2 G.O.(Ms) No.310, Agriculture (OS) Department, dated 23.11.2006.
- 3 From the Office of the Accountant General (A&E), Chennai letter No.Pen.3/III/08-09/34, dated 23.12.2008.
- 4 From the Director of Agriculture letter No.Rc.AEW/1075/A1/2003 dated 08.06.2011 & 25.10.2011.
- 5 Government letter No.9804/OS/ 2011-10, dated 24.07.2012.
- 6 Government letter No.103/OS/2009-26, Agriculture Department, dated 01.08.2012.
- 7 From the Deputy Accountant General (Funds), Office of the Principal Accountant General (A&E), Chennai letter No.FM1/FT3/V1/TANCOF/ 2012-13/25/ 154856, dated 16.11.2012.
- 8 Government letter No.2569/OS/2014 -12, Agriculture Department, dated 15.10.2014.
- 9 Government letter No.18125/OS/ 2015 -1, Agriculture Department, dated 22.09.2015.
- 10 From the Deputy Accountant General (Funds), Office of the Accountant General (Accounts & Entitlements), Chennai-18, letter No. FM1 / FT3 / V1 / TANCOF / 2015-16 /13/ 74939, dated 04.11.2015.
- 11 From the DOA letter No.23497/A2/2014/AEW, dated 16.11.2018.
- 12 Government letter No.28235/OS/2015-31; dated 24.06.2019.
- 13 From the Accountant General (A&E) D.O.letter No. AG (A&E)/ FM1/PF3/V1/TANCOF/ 19-20 / 56 / 81891; dated 18.03.2020.

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### ORDER:-

In the G.O.1<sup>st</sup> read above, 151 employees of the Agricultural Extension Wing of TANCOF which was wound up then were brought under the control of the Commissioner of Agriculture with the condition to remit the Employer's contribution

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of EPF with interest into Government Account and the Employee's contribution of EPF to be transferred to the GPF Account. As per para 5(x) of above said Government Order, the employees inducted by transfer from TANCOF are not eligible for regular pension scheme applicable for Government Servants but they will be covered under the Contributory Pension Scheme that was being worked out by the Government of India.

2. Subsequently, these erstwhile TANCOF employees were made eligible for regular pension from 01.04.2002 by way of an amendment issued vide G.O. 2<sup>nd</sup> read above.

3. Meanwhile, contrary to G.O.1<sup>st</sup> read above, the Regional Provident Fund Commissioner has transferred both the employer's as well as employee's contribution of EPF to the tune of Rs.2,07,90,237/- (Rs.97,36,415 +Rs.1,10,53,822) to the GPF Accounts of 150 employees on the request dated 18.07.2006 of the Liquidator, TANCOF.

4. As the employer's share of EPF was ordered to be remitted into Government account without reckoning the services rendered upto 31.03.2002 in TANCOF for pensionary benefits, the Government was addressed in the letter 3<sup>rd</sup> above to reconsider the clarification regarding the date of commencement of qualifying service from 01.04.2002 for the purpose of calculation of Pensionary benefits (i.e) for counting services rendered in TANCOF also.

5. Pending receipt of reply with reference to the above clarification from the Government, to avoid withdrawal of employer's contribution of EPF by way of TA/PFW from their GPF account, the Government was requested to accord concurrence to remit the employer's share to Government account

6. Consequently, in the Government letter 5<sup>th</sup> read above, permission was accorded to withdraw the employer's share of erstwhile TANCOF employees from the GPF account and remit it to the Government Head of Account.

7. In the Government letters 6<sup>th</sup> and 8<sup>th</sup> read above, it was informed that since Tamil Nadu Co-operative Oilseeds Grower's Federation Ltd., (TANCOF) is a non pensionable organization the request of counting the past services of the erstwhile Tamil Nadu Co-operative Oilseeds Grower's Federation Ltd., (TANCOF)" employees for pension and terminal benefits is not feasible for compliance.

8. Since the above orders would deprive the benefits accrued to the employee by neither making payment of employer's share to them nor counting of TANCOF services for pensionary benefits, the Government was once again addressed in the letter 7<sup>th</sup> read above to re-examine the orders, otherwise to furnish the Head of Account for remitting the employers contribution into Government account.

9. Following this, in the Government letter 9<sup>th</sup> read above, it was confirmed that the request of counting the past services rendered in TANCOF for pension and all other terminal benefits was not feasible for compliance as the TANCOF was a non-pensionable organisation and absorption of these employees into Government

service with effect from 01.04.2002, prior to introduction of Contributory Pension Scheme enabling them to get regular pension itself was a major concession given to them, thereby the request of these employees for counting the TANCOF services was rejected by the Government.

10. Since the Government has categorically rejected the request for counting TANCOF services for pensionary benefits nor intimated the Head of Account into which the employer's share of EPF has to be credited, the Accountant General (Accounts & Entitlements) in his letter 10<sup>th</sup> read above has stated that it was presumed that the intention of the Government was to pay the amount of employer's share of EPF credited into GPF account of the subscriber along with the GPF settlement and hence the Government was requested to confirm the presumption.

11. Meanwhile, certain erstwhile TANCOF employees have filed Writ Petition No.2623 & 3356/2014 with the following payer:-

"xxx to call for the records on the file of the 1<sup>st</sup> respondent herein in Government Letter No.103/OS/2009-26 dated 01.08.2012 and G.O.Ms.No. 310 Agriculture (OS) department dated 23.11.2005 to the limited extent of date of effect of eligibility of the petitioners under regular pension scheme applicable to regular Government servants with effect from 01.04.2002 issued by the 1<sup>st</sup> respondent herein and quash the same and to issue consequential directions to the respondents herein to count the services of the petitioners rendered in TANCOF also along with their Government services for the purpose of reckoning the total qualifying service for grant of all pensionary benefits and accordingly revise their pensionary benefits and to grant them all consequential benefits with arrears thereon with 12% interest on the delayed payment to the petitioners xxx".

Another set of erstwhile TANCOF employees have also filed Writ Petition No.3355/2014 with the similar prayer.

12. The Hon'ble High Court of Madras in its common order dated 10.11.2017 has allowed the above 3 Writ Petitions with the following directions:-

"16. In view of the above discussion and narrative, this Court has no hesitation in allowing the writ petitions to the extent that the petitioners are entitled to the benefit of counting their half of service rendered by them in their erstwhile establishment TANCOF and also their regular service from 01.04.2002 for the purpose of grant of pension and other retirement benefits. Accordingly, the impugned orders, viz., Government letter No.103/OS/2009-26 dated 01.08.2012 issued by the 1<sup>st</sup> respondent and G.O.Ms.No.310 Agriculture (OS) Department dated 23.11.2005 are set aside to the extent as indicated above.

17. The Writ Petitions are allowed on the above terms. There shall be a consequential direction to the first respondent to grant pension and other retirement benefits admissible to the petitioners by applying the rule 11(3) of the Tamil Nadu pension Rules, 1978. The said direction shall be

complied with by the first respondent or by the competent authority within a period of four months from the date of receipt of copy of this order. No costs. Consequently, connected MPs are closed".

13. However, the Government / Department have preferred Writ Appeals. (W.A.No.2240, 2241 & 2244 of 2018) against the above common order dated 10.11.2017 passed by the Hon'ble High Court and the said Writ Appeals are still pending before the Hon'ble High Court.

14. While it is being so, based on the details furnished by the Director of Agriculture in his letter 11<sup>th</sup> read above, the Government, in the letter 12<sup>th</sup> read above, has directed the Director of Agriculture –

- i) to file Supplementary Counter Affidavit in Writ Appeal Nos. 2240, 2241 & 2244/ 2018 on the grounds that since the individuals have claimed employer's contribution, they have effectively accepted that this period cannot be counted towards pensionary benefits.
- ii) after filing the Supplementary Counter Affidavit, the Employer's share of EPF amount of the erstwhile employees of TANCOF may be released by obtaining an undertaking from the individuals (TANCOF employees) that any claim to count the services rendered in TANCOF will not be taken in future and also withdraw the court case pending before the Hon'ble High Court.

15. Meanwhile, the Accountant General (A&E), Chennai in his D.O letter 13<sup>th</sup> read above has informed that the employer's share of EPF credited into the GPF account is being withheld at the time of Final closure of GPF accounts in respect of the erstwhile employees of TANCOF. The withheld amount is lying in the GPF Head of account for more than 5 years and as per Tamil Nadu GPF Rules, interest on the amount available in GPF is payable only for three months after it became payable. Besides, he has also stated that several representations are being received by his office from the retired employees for early release of the withheld employer's share of EPF with interest upto the date of release, for which purpose, specific G.O. is required. Hence, he has requested the Government to issue early orders in this regard to avoid further litigation.

16. The Government have examined the above request of the Accountant General (A&E), Chennai in the light of the circumstances explained at para 1 – 14 above and decided to accept it. Accordingly, the Government direct that the withheld amount of Employer's share of EPF credited into the GPF account of erstwhile TANCOF employees be released alongwith interest upto the date of release, subject to the following conditions:-

- i) That the period of past service rendered in TANCOF will not be counted for pension for which an undertaking be obtained from each individual;
- ii) Claiming the Employer's contribution under EPF is in fact an implicit acceptance by the individuals that, that period of service pertains to TANCOF alone and hence it cannot be counted for

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pension as the individuals cannot claim Employer's contribution under EPF on the one hand and simultaneously claim pensionary benefits for the same period on the other hand, since both are mutually exclusive and inherently contradictory claims;

- iii) An undertaking from the individuals also be obtained to withdraw the court case pending, if any, in this regard; and
- iv) Supplementary Counter Affidavit should be filed by the Department of Agriculture in the Writ Appeals on the grounds that as the individuals have claimed employer's contribution, they have effectively accepted that this period cannot be counted towards pensionary benefits.

17. The Director of Agriculture is directed to take further follow up action in the light of the above orders in consultation with the Accountant General (A&E), Chennai and to furnish a compliance report in the matter to Government at an early date.

18. This order issues with the concurrence of Finance Department vide its U.O.No 26742/Fin(pen)/2020, dated 21.08.2020.

**(By Order of the Governor)**

**Gagandeep Singh Bedi**  
**Agricultural Production Commissioner and**  
**Principal Secretary to Government**

To

The Director of Agriculture, Chennai-5

The Liquidator, Tamil Nadu Co-operative Oilseeds Grower's Federation Limited,  
 Chennai – 32.

The Principal Accountant General (G&SSA/E&RSA/C&RA/A&E/Audit –I &II / AAD),  
 Chennai-18.

The Accountant General (A & E), Chennai – 18.

The Resident Audit Officer, O/o Principal Accountant General (General and Social  
 Sector Audit), Chennai-9.

The Pay and Accounts Office (East ), Chennai – 8. / By Name

The Pay and Accounts Office (South ), Chennai–35./By Name

Copy to:-

The Finance (Agri./BPE/Pension) Department, Chennai-9.

The Connected file (28235/OS/2015).

Stock File / Spare copies.

**/Forwarded by order/**

*M. S.*  
 26/8/2020  
**Section Officer**

35071001  
 26/08/2020

