



W.P.No.36342 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:20.06.2023

Delivered on: 21.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No.36342 of 2016

P.Muthusamy

...Petitioner

Vs

1. Tamil Nadu Electricity Regulatory Commission
Rep by the Secretary
19-A Rukmini Lakshmipathi Salai (Marshalls Road)
Egmore Chennai-600 008.
- 2 The State of Tamil Nadu
Rep by the Secretary to Government
Energy Department Secretariat
Fort St. George, Chennai-600 009.
- 3 The Deputy Accountant Genl/ES- II
Indian Audit & A/cs Dept
O/o. Accountant General,
Tamil Nadu Economic & Revenue Sector Audit
TNEB 3rd Flr Western Wing
144, Anna Salai
Chennai-600 002

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to forthwith pay an amount of Rs.6,38,928/- along with interest accrued towards the balance sum due to the petitioner under the Contributory pension Scheme to the petitioner at such rate as may be fixed by this Court.

For Petitioner : Mr.Rahul Balaji
for
Mr.Suhrith Parthasarathy

For Respondents : Mr.Richandson wilson for R1

Mr.M.Shahjahan, Spl.g.P for R2

Mr.Vijay Shankar for R3

ORDER

The Writ petition has been filed seeking issuance of a writ of Mandamus directing the respondent to pay Rs.6,38,928/-,together with interest, being the balance sum due to the petitioner under the Contributory Pension Scheme.

2. It is the case of the petitioner that he was originally recruited as an Assistant Engineer (Electrical) in Tamilnadu Electricity Board (hereinafter



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referred as TNEB) January 1980 and he continued in service until 15.05.2010, at which point of time he joined the 1st respondent Commission (TNERC). In response to an employment notice published by the 1st respondent on 26.08.2009 in New Indian Express Daily, inviting applications for filing up the post of Director (Engineering), the petitioner applied on 15.09.2009. The 1st respondent vide its proceedings dated 12.02.2010 appointed the petitioner as Director (Engineering – Grade –I) and the petitioner was called upon to join duty on 25.05.2010. The petitioner therefore voluntarily retired from service of TNEB and joined the 1st respondent Commission on 19.05.2010, where he continued his services until his superannuation on 31.05.2015. It is the further case of the petitioner that even in the employment notice published on 26.08.2009, it was specifically mentioned that candidates who are selected by direct recruitment would be covered under the Contributory Pension Scheme of the State Government. The petitioner made a representation on 21.01.2013, requesting the 1st respondent to extend the benefit of contributory pension scheme to him, in terms of the employment notice. The 1st respondent vide its proceedings



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dated 29.05.2013 also ordered extension of the Pension Scheme benefits to the petitioner with effect from 19.05.2010, the date on which the petitioner joined the 1st respondent Commission.

3. It is also stated that ever since 25.05.2013 the applicable charges towards CPS were deducted from the petitioner's salary and deposited along with equal contribution made by the 1st respondent, in a joint savings bank account, operated by the 1st respondent and the petitioner. The 1st respondent vide its letter dated 02.07.2013 informed the 2nd respondent about the CPF benefits being extended to the petitioner and further clarified the queries raised by the 2nd respondent by its letter dated 01.07.2014, addressing the issues raised by the 2nd respondent with regard to the applicability of Rule 7(1) of Tamilnadu Pension Rules 1978 to the petitioner. Despite the petitioner having retired, the amount payable to him under the scheme was not paid and therefore the petitioner sent a letter on 23.11.2015 to the 1st respondent seeking the release of amounts payable to the petitioner. The 1st respondent however vide its proceedings dated 17.12.2015 made a payment



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of Rs.6,38,928/-, being the contribution of the petitioner, along with the interest that had accrued in the bank. However, the contribution of the 1st respondent was not released despite several letters and personal visits of the petitioner. Under such circumstances, the petitioner has approached this court seeking issuance of a Writ of Mandamus

4. The 1st respondent has filed a counter affidavit and also a typed set of papers stating that the petitioner was only re-employed and therefore he was not entitled to the CPS benefits. Moreover, he is already covered under the general provident fund rules and all other benefits when he was employed under TNEB and having received the same and also pension from TNEB, the petitioner cannot seek to be treated as a direct recruit and claim the benefits of CPS. Even when the petitioner was employed with the 1st respondent, he has not objected to the deduction of pension until his retirement and such deduction is done in all cases of re-employment only. The petitioner cannot suo motu confer on himself the status of a direct recruit and seek the benefits of CPS. It is also contended that the employment notice merely stated that the



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candidates selected by direct recruitment would be covered under the CPS and the petitioner, not being a direct recruit, the CPS would not apply to him. The order dated 29.05.2013 extending the CPS to the petitioner was only on account of misinterpretation of statutory rules. The 3rd respondent raised an audit objection vide letter dated 15.07.2014 drawing reference to Rule 7(1) of the Tamilnadu Pension Rules 1978 disentitling the Government Servant from earning two pensions in the service or post. The issue was sought to be clarified and it was decided that the CPS would be applicable only for direct recruits and not for persons who were Retired/Voluntary Retired and already drawing terminal benefits under the Pension Rules of the Government. It is also stated that the appointment order issued to petitioner clearly stated that all rules framed by the Government would apply to the petitioner and therefore the decision of 3rd respondent is alone relevant and final. In short it was contended by the 1st respondent that the petitioner not being a direct recruit, but only a person appointed on re-employment basis post his retirement in TNEB, he was not entitled to CPS.



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5. Heard Mr.Rahul Balaji, for Mr.Suhrith Parthasarathy, learned counsel for the petitioner, Mr.Richardson Wilson, learned counsel for the 1st respondent, Mr.M.Shahjahan, Special Government Pleader for the 2nd respondent and Mr.Vijayshankar for the 3rd respondent.

6. This Court also perused the various documents relied on by the counsel for petitioner as well as the counsel for 1st respondent besides the judgments and GOs relied on by them. Mr. Rahul Balaji, counsel for petitioner contended that the 1st respondent is an independent Commission under the Electricity Act and by no stretch of imagination, the petitioner's case can be treated as one of re-employment. He would also contend that the 1st respondent having passed an order extending the benefits of the CPS to the petitioner and also clarifying to the 2nd respondent with regard to the non-applicability of Rule 7(1) of Tamilnadu Pension Rules to his case, cannot turn around and take shelter under audit objections to deny the petitioner, his lawful entitlement of 50% of employer's contribution that has been withheld unreasonably.



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7. The counsel for petitioner would also rely upon the decision of Division Bench judgment of this court in ***P.Arumugam vs Registrar Tamil university, Thanjavur*** reported in ***2008 (1) LLN 314*** where the Division bench of this court dealt with an employee earning two pensions, in the context of Rule 7(1) of Tamilnadu Pension Rules.

8. Per contra, Mr.Richardson Wilson, counsel for the 1st respondent placed reliance on G.O.Ms.No.80 dated 19.08.2002 in order to establish that it is the Government that decides sanction of the regular staff of the 1st respondent Commission and therefore even though the 1st respondent Commission comes under the purview of the Electricity Act, the services of the employees in the 1st respondent Commission are actually governed only by rules, regulations, orders and instructions issued by Government of Tamilnadu. He would also draw the attention of this court to Annexure 1 to G.O.Ms.No.80 in this regard. The counsel would further rely on the letter dated 04.01.2016 where the Principal Secretary to Government has addressed a communication to the 1st respondent stating that the petitioner's



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appointment is construed as a“re-employment”. He would further place reliance on G.O.Ms.No.430 dated 06.08.2003 and a clarification dated 16.09.2014 which is the audit objection/query raised in so far as the petitioner is concerned. The learned counsel would also take this court through various provisions of the Electricity Act, especially Section 86(1)(f) and Section 91(3) to fortify his arguments that the Commission was not independent of the Government.

9. The short question this court is called upon to answer is as to whether the petitioner’s case is one of re-employment from the TNEB to the 1st respondent Commissioner or whether it has to be treated as a fresh appointment with the 1st respondent Commission. It is not in dispute that the petitioner voluntarily retired from the services of TNEB to enable him to join the 1st respondent Commission. If it was a case of deputation then there would be no difficulty in holding that the petitioner cannot claim the benefits of CPS. However, in this case the petitioner joined the 1st respondent Commission in the post of Director (Engineering – Grade -I) and it was only



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on the basis of the employment notice published by the 1st respondent on 26.08.2009. The said employment notice also carried a note that all candidates selected by direct recruitment would be covered under the CPS Scheme of Government of Tamilnadu. Initially, it is seen that the 1st respondent, did not deduct any amount from the petitioner's salary nor made arbitration of an equal sum towards its share. However when the petitioner raised this issue vide letter dated 21.01.2013, the 1st respondent took a conscious decision on 29.05.2014 to extend the CPS to the petitioner with effect from his date of joining the 1st respondent, namely 19.05.2010. Ever since, the 1st respondent not only deducted proportionate sum from the petitioner's salary, but had also deposited an equal sum so deducted from the petitioner's salary, towards its share of the fund, in a Joint savings bank account. Even when the 2nd respondent raised a query in July 2014, the 1st respondent did not entertain any doubt whatsoever in its mind as to the petitioner's entitlement. Infact the 1st respondent had made it very clear to the 2nd respondent that Rule 7 (1) of Tamilnadu Pension Rules, 1978 would not apply to the petitioner since the petitioner was neither in the same service or



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post nor in a continuing post and that only if these conditions are attracted Rule 7 of Tamilnadu Pension Rules, 1978 would come into play. Surprisingly, after the 3rd respondent raised an audit objection, the 1st respondent has chosen to play it safe and decided to withhold the benefits payable to petitioner. Subsequently the petitioner's contribution alone came to be released by the respondent, the 1st respondent continuing to withhold the 50% contribution of the employer.

10. On a perusal of the letter, from the audit department dated 16.09.2014, it is seen that the Indian Audit and Accounts Department had only sought for a clarification regarding the admissibility of pension to the petitioner, citing Rule 7 of Tamilnadu Pension Rules, 1978. It is seen that even as early as on 29.05.2013, the 1st respondent extended the CPS to the petitioner referring to G.O.Ms.No 80 as well as other G.O's. Things did not stop there. Subsequently, in and by a letter dated 02.07.2013 the 1st respondent has written to the Secretary to the Government(Energy Department) stating that CPS has been extended to the petitioner. One year



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later on 01.07.2014, the 1st respondent has again written to the Secretary of Energy Department, clearly stating as follows:

“The Commission is of the view that Rule 7(1) of the ‘The Tamilnadu Pension Rules, 1978’ is not applicable in the instant case as this is not the same service/post and it is not a continuous service and both are different”

Thus it can be seen that the 1st respondent Commission was very clear about the appointment of the petitioner. They have clarified their position and made their stand clear even in July 2014. However, when the 3rd respondent sought for the very same clarification, the 1st respondent ha the reason best known to it, thought it fit to take a diametrically opposite view.

11. This court finds that having taking a definite stand in so far as the non - applicability of Rule 7 (1)of the Tamilnadu Pension Rules in the case of petitioner, it is not open to the 1st respondent to take shelter under a clarificatory letter issued by the 3rd respondent and deny the petitioner’s lawful entitlement. Even in the decision reported in ***P.Arumugam vs***



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Registrar Tamil university, Thanjavur reported in **2008 (1) LLN 314**, the Division Bench of this court held that services rendered by a Government servant in the university and the state Government are distinguishable and Rule 7(1) of the Tamilnadu Pension Rules cannot be pressed into service to deny the benefits to the Government Servant as it would not amount to earning two pensions in the same service/post at the same time or by same continuing service. Though the arguments of the counsel for the 1st respondent, the Commission being dependent on the state Government for its funds and even for sanctioning the staff and fixing the pay scale etc., appears to be attractive, the same cannot be countenanced for the simple reason that the 1st respondent Commission has relied on very same G.O when clarification was sought for by the 2nd respondent to confirm that the petitioner's case would not be hit by Rule 7(1) of Tamilnadu Pension Rules, 1978. Condition 6 of the Terms and Conditions for the post sanctioned in GO.Ms.No.80 Energy (A1) department dated 19.08.2002 also only states that the Rules and Regulations issued by the Government of Tamilnadu from time to time, regulating the service conditions of Government employees



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would also be applicable to the staff of the Commission. At best, this can be termed as a voluntary decision of the Commission to follow the Rules and Regulations framed by the Government of Tamilnadu, probably from the angle of convenience. It cannot be said that merely because the Commission depends on the State Government for its funds and it is necessary for the Commission to seek for approval of the posts etc., the Commission is only a part or wing of the Government and therefore the petitioner's case should be treated as re-employment. Even a reading of Section 91 of the Electricity Act only goes to show that the appointments are by the Commission and only approval is sought from the Government and there can be no second opinion to the fact that the 1st respondent Commission is an independent judicial Commission which is a creature of statute, namely The Electricity Act. Even from the notification also calling for filling up of the post, it can be seen that the 1st respondent has recognized itself as an independent statutory body. Merely because it has been constituted by the Government of Tamilnadu, it would not render the case of the petitioner, voluntarily retiring from TNEB and joining the 1st respondent Commission, as a case of re-employment. One



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another aspect that comes to light from the employment notice is that even persons who are working in Government, public sector undertakings, Corporations, Boards, Electricity Boards who were desirous of coming on deputation were also eligible to apply after producing a No Objection Certificate from their employer. In so far as this category of such employees, the stand of the 1st respondent Commission that it is a case of re-employment may be justified. However, the petitioner had admittedly voluntarily retired from TNEB and joined the 1st respondent Commission on merits and duly selected only as Direct Recruit and it is not open to the 1st respondent to state that the petitioner was only re-employed. Unfortunately, despite the 1st respondent having entertained no doubts in this regard earlier on, appears to have clouded its mind on the 3rd respondent seeking clarification.

12. Be that as it may, the 1st respondent having taken a definite stand in so far as the petitioner is concerned, is estopped from now taking any other stand, much less a totally and diametrically opposite stand.



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13. For all these reasons, this court allows this Writ Petition and the respondents are directed to release the sum of Rs.6,38,928/-, together with interest accrued, to the petitioner, within 4 weeks from the date of receipt of copy of this order.

21.07.2023.

Internet: Yes

Index: Yes/No

Neutral Citation: Yes/No

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Note: Issue order copy on 25.07.2023

To

1. The Secretary

Tamil Nadu Electricity Regulatory Commission
19-A Rukmini Lakshmipathi Salai (Marshalls Road)
Egmore Chennai-600 008.

2 The Secretary to Government

State of Tamil Nadu
Energy Department Secretariat
Fort St. George, Chennai-600 009.

3 The Deputy Accountant Genl/ES- II

Indian Audit & A/cs Dept
O/o. Accountant General,
Tamil Nadu Economic & Revenue Sector Audit
TNEB 3rd Flr Western Wing
144, Anna Salai
Chennai-600 002

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P.B.BALAJI, J.,
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Pre-delivery order in
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