

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A.No.912 OF 2014

1. The Chairman,
Tamil Nadu Electricity Generation and
Distribution Corporation Limited,
N.P.K.R.R. Maaligai,
No.144, Anna Salai,
Chennai.
2. The Chief Engineer (Personnel),
Tamil Nadu Electricity Generation and
Distribution Corporation Limited,
N.P.K.R.R. Maaligai,
No.144, Anna Salai,
Chennai.
3. The Superintending Engineer,
Tamil Nadu Electricity Generation and
Distribution Corporation Limited,
Tuticorin Thermal Power Station
Tuticorin.

... Appellants

M.Subramanian

Vs.

... Respondent

This writ appeal is preferred under Clause 15 of the Letters Patent against the order of this court dated 11.03.2014 made in W.P.No.35057 of 2013 praying to issue a Writ of Mandamus, to direct the respondents to pay the petitioner all the retirement benefits including pension, gratuity, GPF, DCRG etc.,

For Appellants : Mrs.R.Varalakshmi

For Respondent : Mr.N.Suresh

JUDGMENT

(Judgment of the court was made by SATISH K. AGNIHOTRI, J.)

The instant appeal is directed against the order dated 11th March, 2014 passed in W.P.No.35057 of 2013.

2. The respondent herein / writ petitioner filed a writ petition, seeking a writ of mandamus to direct the respondents therein / appellants herein to pay the petitioner all the retirement benefits, including pension, gratuity, GPF, DCRG, etc.

3. The learned Single Judge, considering all aspects of the matter, allowed the writ petition, as under :

"5.It is an admitted case that the petitioner was conferred with permanent status by a detailed order passed by the Authority under the Tamilnadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981. The correctness of the said order was challenged by way of Writ Petition in W.P.No.11073 of 2002 and the same was dismissed on 14.10.2003. Against the same, the respondents filed Writ Appeal in W.A.No.4088 of 2004, which was also dismissed on 09.09.2005.

6.No doubt, the respondents have restored the petitioner to service on 30.11.2005, as a helper in the Tuticorin Thermal Power Station. But the order passed by the Authority under the Tamilnadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act 1981 on 02.01.2001 was not fully complied with. Therefore, in any event the petitioner was allowed to retire from service on 30.11.2013 and hence, the respondents are directed to disburse all the retirement benefits including the gratuity, pension, GPF, DCRG etc., within a period of four weeks from the date of receipt of a copy of this order. With the above direction, this Writ Petition is allowed. No costs."

4. The facts are in narrow compass. The writ petitioner, after having completed 480 days of continuous service, was granted permanent status on 2nd January, 2001 vide proceedings in Roc.No.A2/3266/2000 of the Deputy Chief Inspector of Factories, Tirunelveli. Feeling aggrieved, the said proceedings was challenged in W.P.No.11073 of 2002 by the Chief Engineer, Tamil Nadu Electricity Board (for short "TNEB"), Tuticorin Thermal Power Station, Tuticorin.

The learned Single Judge, upholding the order of grant of permanent status with effect from 2nd January, 2001, dismissed the writ petition. Thereagainst, a writ appeal, being W.A.No.4088 of 2004, was filed by the Chief Engineer, TNEB. A division bench of this court, by order dated 9th September 2005, confirmed the said order of the learned Single Judge and dismissed the appeal.

5. Thereafter, the writ petitioner preferred a writ petition, being W.P.No.11417 of 2007 for a direction to the Chairman, TNEB to pay backwages to him from the date of removal, i.e., 03rd November 1999 upto the date of reinstatement, i.e., 30th November 2005. The learned Single Judge dismissed the writ petition by order dated 9th April, 2007, holding as under :

"2.In view of the same, the petitioner sent representations to the Board, seeking for backwages for the period from 03.11.1999 to 30.11.2005. As such, this Writ Petition is only misconceived. The authority to confer permanent status has granted the relief, which has been upheld by the Division Bench. However, the petitioner has not taken any steps before any Court of law to set aside the order of termination, dated 03.11.1999, and only when the Writ Appeal was dismissed, the Board reinstated the petitioner on 30.11.2005 as a permanent employee of the Board. Therefore, from the year 1999 to 2005, the petitioner had not worked nor he challenged the termination in a manner known to law and sought for backwages. "

6. The said order was assailed in a writ appeal, being W.A.No.856 of 2007. Upholding the order of the learned Single Judge, the writ appeal was dismissed on 2nd July 2007. Thereagainst, the writ petitioner preferred a Special Leave Petition, being SLP(C)Nos.19911-19912 of 2008. The Supreme Court, finding no ground to interfere with the judgment dated 2nd July 2007 and the review order dated 10th September, 2007, dismissed the Special Leave Petitions and as such, the issue of grant of backwages stood concluded and attained finality.

7. The issue in the present case is the grant of retiral benefits, i.e., pension, gratuity, GPF, DCRG, etc. The learned Single Judge had simply directed to disburse all retiral benefits, including, pension, gratuity, GPF, DCRG, etc., within a period of four weeks.

8. The respondent therein are the appellants before us. It is submitted by the learned counsel for the appellants that once

backwages for the period from 03rd November 1999 to 30th November 2005, has been denied on the ground that the writ petitioner was under termination during the said period, the petitioner is not entitled to retiral benefits, as per the Board proceedings (per) B.P. (Ch) No.264, (Sect. Branch) dated 03.12.2003, as the petitioner was absorbed in service only on 30th November 2005.

9. On the other hand, the learned counsel for the respondent / writ petitioner would submit that the grant of permanent status with effect from 2nd January, 2001 has attained finality, the backwages was denied on account of the fact that the writ petitioner was not in service from 03rd November, 1999 to 30th November, 2005. However, the petitioner was entitled to pension, counting his service from the date of grant of permanent status as on 2.1.2001.

10. Neither the appellant herein / respondent therein nor the respondent herein/ writ petitioner had given any figure or calculation as to how much the writ petitioner is entitled to towards pension, gratuity, GPF, DCRG, etc. Thus, we are not in a position to come to a definite conclusion about the amount payable under several heads, like pension, gratuity, GPF, DCRG, etc. The calculation is left to the appellants on the basis of the materials produced by the writ petitioner.

11. Indisputably, the petitioner was granted permanent status with effect from 2nd January, 2001. The intervening period, when he was out of job on account of either termination or by any other service disability, cannot take away the right of the petitioner for entitlement of pensionary benefit, if he is otherwise eligible under the scheme. The grant of pension, gratuity, DPF, DCRG depends on salary payment made to the petitioner. Thus, the appellants are directed to compute the retiral benefits of the respondent herein under different heads, which he is entitled to keeping in view the permanent status granted to the petitioner as on 2nd January, 2001.

12. With the aforesaid direction, the writ appeal stands disposed of. No costs.

Sd/-

Assistant Registrar(CO)

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Sub Assistant Registrar

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To

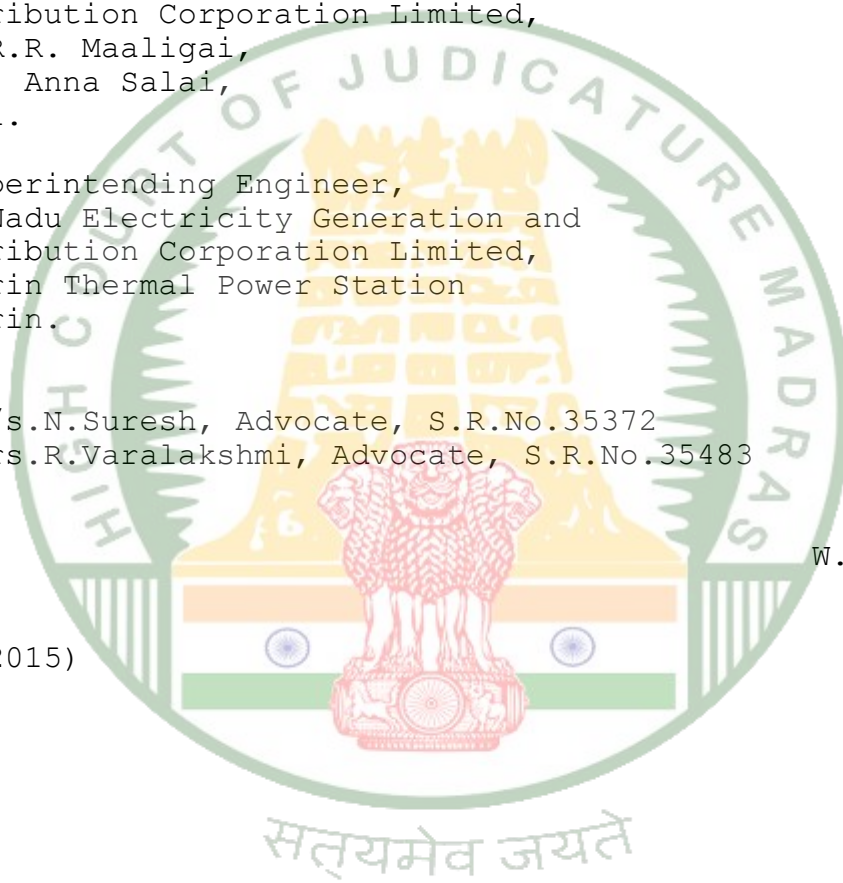
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+1cc to M/s.N.Suresh, Advocate, S.R.No.35372

+1cc to Mrs.R.Varalakshmi, Advocate, S.R.No.35483

W.A.No.912 of 2014

SAI (CO)
CA(21/07/2015)



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