

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16/12/2015

C O R A M

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P.No.5176 of 2015

T.Sivaraman

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Petitioner

Vs

1. The Chairman
Tamil Nadu Generation and Distribution
Corporation Ltd
No.144 Anna Salai
Chennai 2.
2. The Chief Engineer (Personnel)
Tamil Nadu Generation and Distribution
Corporation Ltd
No.144 Anna Salai
Chennai 2.
3. The Superintending Engineer
Villupuram Electricity Distribution Circle
Tamil Nadu Generation and Distribution
Corporation Ltd
Villupuram.

...

Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the entire records connected with the impugned order of the rejection of pension to petitioner, passed by the third respondent in Letter No.00380023(1257)/NiP.3/U.2/Ko.Ou.2007 dated 17/3/2007 and quash the same and direct the respondents to absorb the petitioner on par with his junior C.Thomas w.e.f., 24/4/1992 as helper with consequential benefits and disburse the terminal and pension benefits on account of retirement by calculating the qualified service from 29/4/1992 to 30/11/2005 and count the half of the service from 1983 to 23/4/1992, as per (FB) TANGEDCO proceedings No.31 dated 8/9/2011.

For Petitioner ... Mr.S.N.Ravichandran
For respondents ... Mr.Fakkir Mohideen

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O R D E R

With the consent of the learned counsel appearing on either side, this writ petition is taken up for final disposal.

2. Heard Mr.S.N.Ravichandran for the petitioner and Mr.Fakkir Mohideen, learned Standing Counsel for the respondents.

3. This writ petition has been filed praying to quash the impugned order passed by the third respondent in Letter No.00380023(1257)/NiP.3/U.2/Ko.Ou.2007 dated 17/3/2007 and direct the respondents to absorb the petitioner on par with his junior C.Thomas w.e.f., 24/4/1992 as helper with consequential benefits and disburse the terminal and pension benefits on account of retirement by calculating the qualified service from 29/4/1992 to 30/11/2005 and count the half of the service from 1983 to 23/4/1992, as per (FB) TANGEDCO proceedings No.31 dated 8/9/2011.

4. The petitioner is a contract labour, who was working as the Contractor, engaged by the respondent Board. It appears that the petitioner's case was considered along with other similarly placed persons by the Honourable Mr.Justice Khalid Commission, for being observed, as regular employees of the respondent Board and the petitioner is stated to have attended an interview, pursuant to a communication dated 23/8/1991.

5. When the petitioner attended the interview, the Chief Engineer (Personnel) of the respondent Board found that along with the petitioner, there are several persons in whose cases there were certain discrepancies in the Date of Birth and therefore, the names of those persons along with the relevant certificates, issued by the Educational authorities, relating to Date of Birth, educational qualification, etc., were forwarded to the Superintending Engineer, for taking further action, as it is urgently required.

6. Accordingly, the certificates of 106 persons, including the petitioner, were forwarded to the third respondent, for verification. The petitioner's name finds place in S.No.8 of the Annexure to the communication dated 12/11/1991 from the Chief Engineer (Personnel) to the third respondent. The petitioner would state that verification process, so far as the petitioner was not done immediately and the authorities, took their own time and only in 1997, by proceedings dated 6/6/1997, which has confirmed that Date of Birth, given by the petitioner, at the time of recruitment was correct, viz., 8/11/1947. The petitioner appears to have not raised any demand for issuing an order of appointment right from the date of his absorption and said to have continued to discharge his duties.

7. In the list of candidates enclosed in the communication dated 12/11/1991 of the Chief Engineer Personnel, there was one other candidate by name C.Thomas, whose name finds place in S.No.20. The verification process of C.Thomas was done and completed in 1992 and he was issued with an order of appointment on 24/4/1992.

8. The petitioner would state that if his case was also considered expeditiously, he would have been absorbed along with C.Thomas or even earlier. But for the reasons not attributed to the petitioner, the petitioner is now put to prejudice. The prejudice which has now caused to the petitioner, on account of the fact that he has been denied pension, on attaining the age of superannuation on 30/11/2005, on the ground that he does not possess the qualifying service. As his service in the Board is only for 7 years and 9 months, taking into account the date of permanent appointment, on 17/12/1998, the petitioner now seeks, to set the clock back and he goes along with C.Thomas, who was much junior in the list as he was in S.No.20 and the petitioner was in S.No.8.

9. The petitioner approached the labour Officer. However, the conciliation failed and the Company also declined to refer to the dispute by G.O.D.No.610 dated 19/12/2012, on the ground that the petitioner has attained the age of superannuation. Now, the petitioner seeks for a direction to reckon his service along with C.Thomas from the year 1992 complete the total length of service and sanction pension. However, this exercise cannot be done in the writ petition and even if the Government has refused to refer the dispute for adjudication, two remedies are open to the petitioner, one was to challenge the said Government Order dated 19/12/2012 or to raise an Industrial Dispute under Section 2 (1) (2) of the Industrial Disputes Act. However, the petitioner had not done neither of the two, but submitted a representation, to the authorities, on 30/6/2014 and 10/9/2014 and has approached this Court. At this juncture, challenging the impugned order of rejection passed on 17/3/2007, the learned Standing Counsel appearing for the respondent Board would submit that the writ petition is devoid of merits and liable to be dismissed, on the ground of unexplained delay and laches.

10. Further, it is submitted that the petitioner had completed only 7 years and 9 months service and he is not entitled for pension, as the memo qualifying service, for such entitlement is 10 years.

11. Further, it is submitted that the petitioner having accepted his absorption into the service of the Board, with effect from 17/2/1998, cannot now seek the relief sought for and

he has not changed the date of absorption or his seniority within a period of three months as contemplated under Rule 97 of the Tamil Nadu Electricity Board Service Regulations.

12. After hearing the learned counsels for the parties, this Court is of the view that since the claim for pension is for the past services rendered, the petitioner should not be non-suited on the ground that he has not questioned the order dated 17/3/2000 earlier or he has not questioned the date of absorption during 1998. The facts placed before this Court shows that the respondent had not immediately caused the verification, though the Chief Engineer (Personnel) directed the third respondent on 12/11/1991, to make the necessary verification urgently for taking further action.

13. However, the third respondent did the verification process and submitted a reply to the Chief Engineer Personnel after a period of seven years i.e., on 6/6/1997. This delay has not been explained in the counter affidavit. Further more, the above submissions made by the petitioner have not been taken note of by the third respondent, while passing an order dated 17/3/2007. As long as there is no dispute in the petitioner's Date of Birth, it has to be seen as whether the petitioner had been worked all through and if he is so, if the petitioner could be entitled for being considered on par with C.Thomas.

14. The learned counsel for the petitioner placed reliance on the decision of the Honourable Division Bench of this Court in A.SUBRAMANI Vs. 1. THE CHIEF ENGINEER (PERSONNEL), 800 ANNA SALAI, TNEB, CHENNAI 2 (W.A.No.1916 of 2013 dated 19/3/2014). In the said appeal, the Honourable Division Bench had set aside the order passed in the writ petition and directed the Board to absorb the petitioner therein in terms of the Board proceedings in BP (FB) No.17 Secretariat Branch dated 28/4/1999. This aspect of the matter has also to be considered by the respondents.

15. The learned counsel would further submit that the appellants in the said Writ Appeal was not in service but whereas the petitioner was in service. These are factual issues have to be gone into by the concerned Government authority and they have to examine as to whether the petitioner was in service and as to why the petitioner should not be considered on par with C.Thomas when the delay in verification of the petitioners credentials was not attributable to the petitioner.

16. In the light of the above facts, the writ petition is allowed and the impugned order is set aside and the matter is remanded to the second respondent for fresh consideration. The second respondent, shall consider the petitioner's representations dated 17/3/2014, 30/6/2014 addressed to the

second respondent, followed by a reminder dated 10/9/2014, addressed to the Managing Director, with a copy marked to the second respondent and take note of the facts, as pleaded by the petitioner and examine the case of the petitioner, and pass appropriate orders, on merits and in accordance with law, within a period of eight weeks, from the date of receipt of a copy of this order.

17. The learned counsel for the petitioner, on instruction submitted that the petitioner is not claiming any monetary benefit from the respective date, but the petitioner's request is only to consider his services, from an anterior date, since the verification of the petitioner's service were unduly delayed for seven years and during the said period, the petitioner is stated to be working.

No costs. Consequently, the connected Miscellaneous Petition is closed.

mvs.

s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

To

1. The Chairman
Tamil Nadu Generation and Distribution
Corporation Ltd
No.144 Anna Salai Chennai 2.
2. The Chief Engineer (Personnel)
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Villupuram Electricity Distribution Circle
Tamil Nadu Generation and Distribution
Corporation Ltd Villupuram.

+ 1 cc to Mr.M.Fakkri Mohideen, Advocate SR 67757

+ 1 cc to Mr.S.N.Ravichandran, Advocate SR 67732

ksj(co)

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