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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED :14.06.2016
CORAM
THE HONOURABLE MR.JUSTICE T.RAJA

W.P (MD) No.6287 of 2015
and
M.P (MD) No.2 of 2015

S.Perumal

.. Petitioner

vs.

1. The State of Tamil Nadu,
Rep. By its Secretary,
Department of Energy,
Fort St. George,
Chennai - 600 006.
2. The State of Tamil Nadu,
Rep. By its Secretary,
Department of Finance(Pension),
Fort St. George, Chennai - 600 009.
3. The Accountant General,
Office of the Accountant General,
144, Anna Salai, Chennai - 600 002.
4. The Superintendent Engineer,
Virudhunagar Electricity Distribution Circle,
Tamil Nadu Generation and
Distribution Corporation (TANGEDCO),
Virudhunagar, Virudhunagar.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings issued by the fourth respondent Superintendent Engineer in Letter No.07192/NePe2/03/2014-1, dated 10.04.2014 and his consequential proceeding in Letter No.07192/Nepe2/03/2014-3, dated 02.12.2014, quash the same and further direct the respondents herein to sanction and release forthwith the pension amount under the Contributory Pension Scheme Index No.38831CI admissible to the petitioner with interest.

For Petitioner

:Miss.A.Amala for
M/s.T.Cibi Chakraborty

For R-1 & R-2

:Mr.R.Anandaraj,
Government Advocate

For R-3

:Mr.P.Gunasekaran

For R-4

:Mr.G.Kasinatha Durai.

**ORDER**

This Writ Petition has been filed by the petitioner to call for the records relating to the impugned proceedings issued by the fourth respondent Superintendent Engineer in Letter No.07192/NePe2/03/2014-1, dated 10.04.2014 and his consequential proceedings in Letter No.07192/Nepe2/03/2014-3, dated 02.12.2014, quash the same and to further direct the respondents herein to sanction and release forthwith the pension amount under the Contributory Pension Scheme kept under Index No.38831CI admissible to the petitioner, with interest.

2. The petitioner Mr.S.Perumal, who was initially appointed as Contract Labourer in Operation and Maintenance Division at Rural South, Rajapalayam Section, Virudhunagar District under the Tamilnadu Electricity Board for the period from 1984 to 2007, thereafter, was absorbed as Mazdoor(Road Service) in the Sub-Station of Mudangiyar and subsequently, was placed under Regular time scale of pay with effect from 08.09.2007. Later on the Government of Tamil Nadu brought out an amendment in the Tamil Nadu Pension Rules,1978 vide G.O.Ms.NO.259(Finance-Pension), dated 06.08.2003, introducing a proviso to Rule 2 thereof to the effect that Old Pension Rules would not apply to the employees appointed on or after 01.04.2003. As such, the Old Pension Scheme came to an end on 31.03.2003 and accordingly New Contributory Pension Scheme came into force from 01.04.2003. On the basis of the same, the petitioner was contributing. After continuous contribution, on reaching the age of superannuation, the petitioner retired from service on 31.08.2011. Since his entire service was uninterrupted, the fourth respondent Superintendent Engineer disbursed a sum of Rs.40,114/- and Rs.8,518/- towards encashment of surrendered earned leave and unearned leave and Special Provident fund cum Family Benefit Fund respectively. However, the other retiral benefits namely, pension and E.P.F were not disbursed. Therefore, the petitioner has made a representation to the third and fourth respondents on 04.01.2012 requesting him to sanction the amount kept in his Contributory Pension Scheme. Since there was no response, another representation was made on 12.12.2013. Even then, there was no response. Hence, the petitioner has filed W.P(MD)No.4368 of 2014 seeking a direction to sanction and release forthwith his pension amount kept under Index No.38831CI. This Court considering the fact that the petitioner retired from service after rendering service for number of years, passed an order on 12.03.2014, directing the Superintending Engineer, Virudhunagar Electricity Distribution Circle, Virudhunagar third respondent therein to consider his representation, dated 12.12.2003 and pass orders on merits and in accordance with law within a period of four weeks from the date of service. But surprisingly they have passed the impugned order stating that the contributory pension shall be paid to the nominee(legal heirs) or in the absence of any



nomination of legal heirs, to the legal heirs of the deceased employee. Challenging the said order, the petitioner has come to this Court.

3. Heard the submissions made on both sides and perused the materials available on record.

4. It is the grievance of the petitioner that when the petitioner all along has contributed towards contributory pension scheme, the respondent employer has to refund the same on the date of his retirement along with equal contribution from the employer's side.

5. Only in the event of death of employee, the nominee or his legal heirs should be disbursed with the above benefit. In the present case, the fourth respondent is so arbitrarily refusing the same to the employee, who is alive and the same is absolutely unacceptable. Therefore, the approach of the fourth respondent should be held as arbitrary.

6. I find merits on the submissions made by the learned counsel appearing for the petitioner. It has been settled in series of case by this Court as well as Apex Court that pension is not bounty.

7. In the present case, it is not in dispute that the petitioner has contributed towards the Contributory Pension Scheme under Index No. 38831CI. The petitioner after retirement on reaching the age of superannuation on 31.08.2011 in all fairness would have been disbursed with the pension. As it was not sanctioned, the petitioner came to this Court and this Court vide order, dated 12.03.2014, passed an order in W.P(MD)No.4368 of 2014 directing the fourth respondent to consider and pass orders on the representation, dated 04.01.2012 and 12.12.2003. But, it is not known why the respondents have not applied their mind. Therefore, this Court has to pass another order now.

8. In the result, the Writ Petition is allowed and the impugned order, dated 10.04.2014 passed by the fourth respondent, is hereby set aside. The fourth respondent is directed to settle all the benefits, within a period of four weeks from the date of receipt of a copy of this order with costs of Rs.15,000/- (Rupees Fifteen Thousand Only). Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)



To

1. The Secretary,
State of Tamil Nadu,
Department of Energy,
Fort St. George,
Chennai - 600 006.
2. The Secretary
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Department of Finance(Pension),
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3. The Accountant General,
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4. The Superintendent Engineer,
Virudhunagar Electricity Distribution Circle,
Tamil Nadu Generation and
Distribution Corporation (TANGEDCO),
Virudhunagar, Virudhunagar.

+1cc to the Special Government Pleader, Sr.No.30509

+1cc to Mr.M/s.Cibi Chakraborty, Advocate, Sr.No.30545

+1cc to Mr.G.Kasinatha Durai, Advocate, Sr.No.30337

+1cc to Mr.P.Gunasekaran, Advocate, Sr.No.31066

pm

JM/NGM-MP/SAR-II/18.07.2016/4P-9C

W.P. (MD) No.6287 of 2015
and
MP (MD) No.2 of 2015
14.06.2016