

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 10.02.2020
CORAM
THE HON'BLE MR.JUSTICE M.GOVINDARAJ
W.P.No.26564 of 2010

S.Avanivendhan

...Petitioner

vs

1.The Chairman,
Tamil Nadu Electricity Board,
800, Anna Salai,
Chennai - 2.

2.The Chief Engineer (Personnel),
Tamil Nadu Electricity Board,
800, Anna Salai,
Chennai - 2.

3.The Superintendent Engineer,
Pudugai Electricity Distribution Circle,
Pudukottai.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents 1 and 2 to sanction the terminal benefits, pension, family pension due to the medical invalidation of the petitioner's father namely M.Sudesan (Deceased), with effect from 23.08.1988 with arrears and interest, at the rate of 12% per annum, from the due date till the date of actual payment.

For Petitioner : Mr.S.N.Ravichandran

For Respondents : Mr.Fakir Mohideen

O R D E R

The Writ Petition has been filed to direct the respondents 1 and 2 to sanction the terminal benefits, pension, family pension due to the medical invalidation of the petitioner's father namely M.Sudesan (Deceased), with effect from 23.08.1988 with arrears and interest, at the rate of 12% per annum, from the due date till the date of actual payment.

2.The petitioner's father was suffering from Alcoholic Neuritis disease and he was referred to medical examination by a duly constituted board on 23.08.1988. The Medical Board, after examination, declared that the employee was completely and permanently incapacitated for further service of any kind, in consequence of Alcoholic Neuritis. On 26.10.1989, the petitioner's father was relieved of his duties, on the ground of medical invalidation as per Para 80 of Tamil Nadu Electricity Board Service Regulation. The communication dated 26.10.1989 specifically states that the petitioner's father was entitled for all the benefits as admissible under the Board Rules. Thereafter, the proposal settling all the terminal benefits was forwarded to the competent authority and since the form did not reach the office, he was directed to re-submit the same on 24.03.1990.

3.While the matter stood thus, on 21.03.1991, the petitioner's father died. Thereafter, the petitioner's brother made a representation for family pension, which was rejected by the third respondent, by his proceedings dated 22.11.1991, on the ground that as per Rule 36(3)(a) of the Tamil Nadu Pension Rules, 1978, the petitioner is not entitled to pension, family pension and gratuity. The petitioner's brother also died on 19.10.1996. Subsequently, the petitioner made a representation on 13.03.2009 for compassionate appointment. Since the said representation was not disposed of, he filed W.P.No.11886 of 2009, in which, this Court passed an order on 01.07.2009, directing the respondents to pass orders. Subsequently, the petitioner had also sent a legal notice on 21.07.2009. The respondents have acknowledged the receipt of legal notice and sought for time for giving a reply. However, the petitioner without waiting for a reply has preferred this petition, for a direction to direct the respondents 1 and 2 to sanction terminal benefits, pension and family pension to the petitioner.

4.The learned counsel for the petitioner would submit that it is a very pathetic case, where family pension was denied unduly to the petitioner and his family. As per Regulation 86 of Tamil Nadu Electricity Board Service Regulation, an employee who is invalidated from service, shall be eligible for payment of gratuity/pension and DCRG as admissible to him. In fact, at the time of passing invalidation order on 26.10.1989, the third respondent has made it very clear that the petitioner's father was eligible to all benefits as admissible under Board Rules. As per Regulation 86 of the Board Service Regulation, payment of pension is admissible to the petitioner's father and hence, it should have been paid. Only after the death of his father, a communication was sent that he was not entitled for pension.

Rule 36 of the Tamil Nadu Pension Rules contemplates that for grant of invalid pension, a Medical Board shall consider and certify the same. All cases in which it is certified that if the incapacity of the service was due to the irregular or intemperate habits, it should be submitted to Government for orders through the proper channel, together with the legal opinion. After considering the same, Government alone can pass an order either to engage him in a lower pay or in a lower post and refuse pension. He would also rely on Rule 41, which states that it is the Government which can take a decision either to grant or reject the pension for medically invalidated person.

5.The learned counsel for the petitioner further submitted that even for a person, who is removed from service, considering the factual background, Government may take a decision either to grant pension or not. That be so, the service regulation which provides for invalidated pension should not have been denied for the petitioner. Considering the family situation of the petitioner, family pension should have been granted to the petitioner. The learned counsel would also contend that a similar placed person, who was invalidated from services on the ground of failure of liver, was granted pension and the same was informed to the petitioner, when he raised a query under the Right to Information Act.

6.The learned counsel appearing for the respondents would vehemently contend that the petitioner's request was rejected as early as on 22.11.1991. Hence, the present Writ Petition, on the face of it, is not maintainable and hit by delay of laches. The request made on 26.05.2007 will not renew the cause of action. According to him, Rule 36(3)(a) of the Tamil Nadu Pension Rules clearly spell out that a person who had irregularities and intemperate habits is not entitled for pension. Therefore, the present Writ Petition is liable to be dismissed.

7.Heard the submissions on either side.

8.From the reading of the order passed on 26.10.1989, invalidating the petitioner's father from service, it is clearly mentioned that he is entitled for all the benefits. Till his death, the respondents did not pass any orders, perhaps for want of service register. Regulation 9(2) as amended of Tamil Nadu Electricity Board Liberalised Pension Regulations, 1960 makes is clear that provisions of the regulations shall be in addition to and not in derogation of Tamil Nadu Pension Rules, 1978. Rule 36 of Tamil Nadu Pension Rules deals with grant of invalid pension. Rule 36(3) of the above rules clearly specify that the incapacity is directly due to irregular or intemperate habits.

Note 10:- under Sub Rule (1) of Rule 36 specifies that no pension may be granted. All cases in which it is certified that the incapacity for service is due to irregular or intemperate habits, should be submitted to Government for orders through proper channel, together with the opinion of the Director of Medical Education. Therefore, it can be inferred that a discretion is vested in the Government or the Pension Sanctioning Authority of Board, who shall take a decision in this aspect.

9. In the considered opinion of this Court, the Superintending Engineer is not a competent authority to exercise discretion. Hence, the order passed by the respondent rejecting the request for family pension is illegal, as it shall be decided by the Board or the Government as per Tamilnadu Pension Rules. The petitioner was invalidated from service on 26.10.1989. The employee during his lifetime i.e., upto 21.03.1991 was not informed that he was not entitled to invalid pension. After the death of the employee, it was informed to the legal heirs depriving the right of the deceased employee to make any representation. The details of length of service was also not discussed in the order. Hence, the order dated 22.11.1991 rejecting the claim for pensionary benefits is set aside and a direction is given to the respondents to submit the proposal to the Board or any other appropriate authority along with all the service records of the petitioner's father for taking a decision with regard to grant of family pension. The appropriate authority as the Regulations of the Board shall take a decision and communicate the same. The said exercise shall be completed by the respondents within a period of 4 weeks from the date of receipt of a copy of this order. Accordingly, the Writ Petition is disposed of. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

hvk
To

1. The Chairman,
Tamil Nadu Electricity Board,
800, Anna Salai,
Chennai - 2.

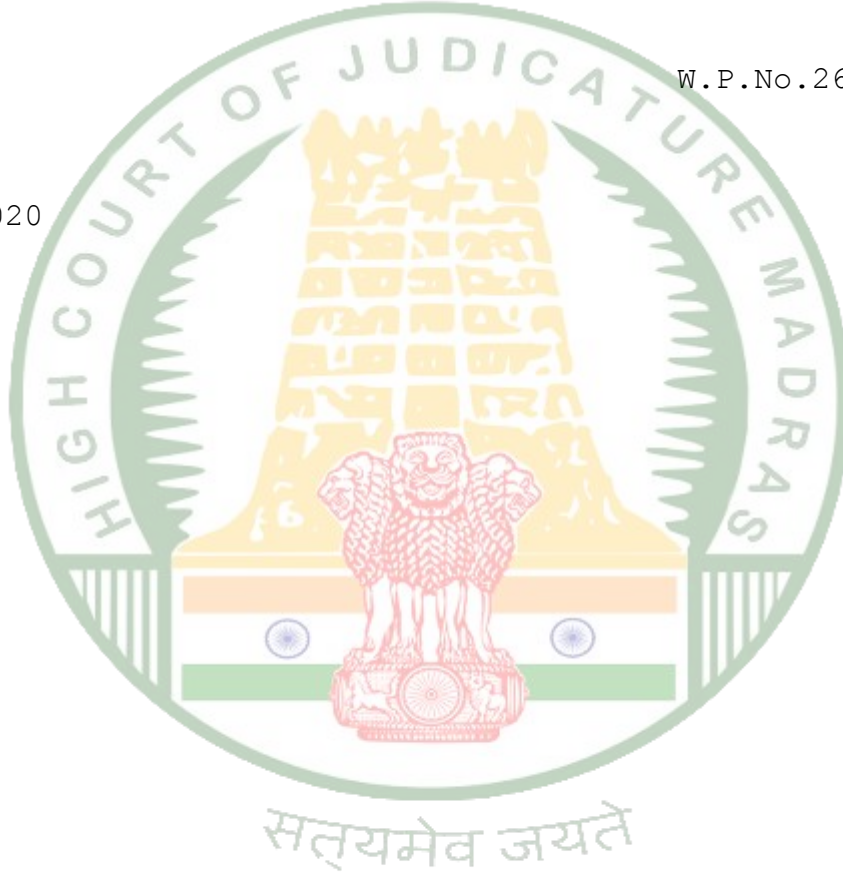
2.The Chief Engineer (Personnel),
Tamil Nadu Electricity Board,
800, Anna Salai,
Chennai - 2.

3.The Superintendent Engineer,
Pudugai Electricity Distribution Circle,
Pudukottai.

+1 cc to M/s.S.N.Ravichandran Advocate sr10922
+1 cc to M/s.M.Fakkir Mohideen Advocate sr11147

W.P.No.26564 of 2010

cp(co)
aa10/09/2020



WEB COPY