

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 09.09.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 8337 OF 2013

S.Sam Sundararaj

.. Petitioner

- Vs -

1. Government of Tamil Nadu
rep. By the Secretary
Industries Department
Fort St. George, Chennai - 9.

2. The Chairman & Managing Director
Tamil Nadu Electricity Board
No.144, Anna Salai
Chennai - 600 002.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records pertaining to the impugned order issued vide Letter NO.5995/30/G.19/G191/2009-8 dated 18.1.2013 issued by the Chairman and Managing Director, Tamil Nadu Electricity Board, No.144, Anna Salai, Chennai 600 002, the 2nd respondent herein and quash the same and direct respondents 1 and 2 herein to consider and grant pension to the petitioner by considering the services rendered together in Tamil Nadu Electricity Board and TANSI Corporation Ltd.

For Petitioner : Ms. Jothivani

For Respondents: Mr. S.Thangavel, Spl. GP for R-1
Mr.Dilip Kumar for R-2

ORDER

It is the case of the petitioner that initially he was appointed in TANSI, a Government owned entity, in the year 1967 based on his qualification of ITI holder. TANSI, which was a Government owned, was converted into a Corporation and the petitioner continued his services with TANSI till 11.1.1986 and on it being declared a sick and defunct unit, the 159 employees employed, including the petitioner were compelled to resign their job against which the employees filed writ petition before

this Court challenging their retrenchment, which matter went up to the Hon'ble Supreme Court and the Hon'ble Apex Court, by order dated 24.7.1987, direction was issued to absorb the 159 employees within a period of three months, however, based on the request of the State, by order dated 28.11.97, the period for absorption was extended upto 31.12.1988. In pursuance of the said direction, the Government issued G.O. Ms. No.127 dated 9.12.88 for absorption of the workers/petitioners therein. However, inspite of the said Government Order, the petitioner was absorbed by the 2nd respondent only on 24.7.1989. The petitioner, after absorption, continued his services and superannuated on 30.9.98. After retirement, pension proposal was forwarded to the Pension Trust for payment of pension. However, the same was rejected by the 2nd respondent on 8.1.13 on the ground that the petitioner has not rendered the qualifying service of 10 years and has put in only 9 years 2 months and 11 days and even after invoking Rule 43 (2) of the Pension Rules, the petitioner falls short of the requisite qualifying service. Challenging the said rejection, the present writ petition has been filed.

2. Learned counsel appearing for the petitioner submitted that though the Hon'ble Apex Court had granted time only till 31.12.1988 for absorption of the employees of TANSI and in pursuant to which G.O. Ms. No.127 dated 9.12.88 was issued, the 2nd respondent has kept silent without taking any action on the said Government order and had not absorbed the petitioner before 31.12.1988. It is the further submission of the learned counsel for the petitioner that had the Government Order been complied with forthwith as per the direction of the Supreme Court, the petitioner would have been appointed well before 31.12.1988 and would have put in another seven months of service, which would have accrued to his credit to enable him achieve the qualifying service for the purpose of pension. The inaction of the respondents cannot be put against the petitioner to deprive him of his pensionary benefits and, therefore, prayed for allowing the present petition. सत्यमेव जयते

3. Per contra, learned standing counsel appearing for the 2nd respondent while reiterated the contentions raised in the counter, submitted that the petitioner was absorbed only on humanitarian grounds and based on the G.O. Ms. No.116 dated 4.2.88, the petitioner was appointed and, therefore, the petitioner cannot claim that he is eligible for pension, when he has not put in the requisite qualifying service. Therefore, he prayed for dismissal of the petition.

4. This Court gave its anxious consideration to the contentions advanced by the learned counsel on either side and perused the materials available on record.

5. The facts in issue are not in dispute. The only question that arises for consideration in the present case is whether the petitioner has the necessary qualifying service to his credit to stake a claim for pension.

6. It is not in dispute that initially the Hon'ble Supreme Court, on the plea of the employees of TANSI had directed the State Government to absorb the employees of TANSI in Government owned Boards and Corporations and the last of the cut off date given for their absorption was 31.12.1988. No further extension of time had been granted by the Supreme Court for their absorption. Therefore, for all purposes, the petitioners ought to have been absorbed before 31.12.1988, lest, the act of the State in not absorbing them before the said date would be nothing but non-compliance of the directions of the Hon'ble Supreme Court, which would attract the provisions of the Contempt of Courts Act.

7. Further, it is seen from the materials available on record that though G.O. Ms. No.127 dated 9.12.1988 was passed for absorption of the employees of TANSI, however, curiously, the same has not been given effect to by the 2nd respondent till 15.7.1989. For almost a period of seven months, the 2nd respondent has kept silent, though oblivious of the Government Order issued and had absorbed the petitioner in service only on 24.7.89, by which time, a period of seven months had lapsed. Had the petitioner been appointed before the cut-off date of 31.12.1988 prescribed by the Hon'ble Apex Court, it is clear that the petitioner would have to his credit a qualifying service of over 9 years and 9 months and applying Rule 43 (2) of the Pension Rules, the period of qualifying service would stand rounded off to 10 years entitling the petitioner to the benefit of pension. The inaction on the part of the 2nd respondent in not giving effect to the Government Order immediately, cannot be put against the petitioner to his detriment to disentitle him the benefit.

8. In the above backdrop of the facts, this Court is of the considered opinion that the petitioner would be deemed to have been absorbed in service of the 2nd respondent on and from 31.12.1988, the date, which was prescribed by the Hon'ble Supreme Court for absorption of the employees and any lacunae and inaction on the part of the 2nd respondent to absorb the petitioner would enure to the benefit of the petitioner as if he had put in service on and from 31.12.1988 for the purpose of calculating his service for the purpose of pensionary benefit. In such view of the matter, this Court holds that the petitioner would be deemed to have entered into service on and from 31.12.1988, which should be taken as the date for calculating

his service for the purpose of pension. Once the said date is fixed at 31.12.1988, from the calculation as shown by the 2nd respondent in its counter, adding seven months would quantify the service of the petitioner at 9 years and 9 months, thereby, attracting Rule 43 (2) of the Pension Rules.

9. For the reasons aforesaid, this writ petition is allowed and the respondents are directed to calculate the pensionary benefit due to the petitioner by taking his date of entry into service as 31.12.1988 and pay the eligible minimum pension to the petitioner along with all other consequential service benefits, if any, if not paid already. However, there shall be no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government
Industries Department
Government of Tamil Nadu
Fort St. George, Chennai - 9.

2. The Chairman & Managing Director
Tamil Nadu Electricity Board
No.144, Anna Salai
Chennai - 600 002.

+1cc to M/s.S.S.Jhothivani, Advocate in Sr.29424
+1cc to M/s.P.R.Dhilipkumar, Advocate in Sr.29449
+1cc to the Government Pleader in Sr.29632

सत्यमेव जयते

W.P. NO. 8337 OF 2013

ak(co)
rv(28/9/2020)

WEB COPY