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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.20949 of 2008

G.Viswanathan

... Petitioner

Vs

1. The Secretary to Government,
Energy Department,
Fort St. George, Chennai-9.
2. The Secretary to Government,
Industries Department,
Fort St. George, Chennai-9.
3. The Special Commissioner &
Commissioner of Industries & Commerce,
Chennai-600 005.
4. The Chairman,
Tamil Nadu Electricity Board,
Chennai-600 002.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus, to call for all the connected records in the issuance of the impugned order dated 19.7.08 in Lr.No.065453/464/G26/G261/2008 dated 19.7.2008 of the Chief Engineer/ Personnel, TNEB, Administrative Branch i.e. The 4th Respondent herein together with the impugned order G.O.Ms.No.348 Industries Department dated 9.4.85 of the 2nd respondent (now mentioned in the impugned order of 4th Respondent) as far as the Post of Glass Blower is concerned in respect of this petitioner and to quash them; consequently to direct the respondents i.e. 2nd, 3rd & 4th to count the past service of the petitioner of about 16 years rendered in the Industries Department for Pension and Pensionary benefits alone.

For Petitioner : Mr.A.L.Namasivayam

For Respondents : Mr.C.Selvaraj (for R1 to R3)
Government Advocate

Mr.P.Subramanian (for R4)



O R D E R

Heard Mr.A.L.Namasivayam, learned counsel for the petitioner, Mr.Selvaraj, learned Government Advocate for R1 to R3, being the Secretaries to Government, Energy (R1) and Industries (R2) Departments and the Special Commissioner, Commissioner of Industries (R3) and Mr.P.Subramanian, learned counsel for Tamil Nadu Electricity Board (R4)/(TNEB/Board).

2. The petitioner challenges order dated 19.7.08 passed by the 4th Respondent together with G.O.Ms.No.348 Industries Department dated 9.4.85 of the 2nd respondent and seeks a direction to the respondents i.e. 2nd, 3rd & 4th to count the past service of the petitioner of about 16 years rendered in the Industries Department for Pension and Pensionary benefits alone. The relevant facts that would have to be considered in deciding the prayer are as follows:

(i) the petitioner had entered service in the Government Scientific Glass Training Centre, Guindy on 15.02.1969 as a daily wage worker;

(ii) he was appointed to the position of Glass Blower and relieved from the Centre on 07.08.1973 having put in service of 4 years, 5 months and 25 days as a skilled daily wage worker.

3. His appointment as Glass Blower was under proceedings No.752/GU/73, dated 31.07.1973 that reads as follows:

'ORDER:

Thiru G.Viswanathan, Skilled Worker, Government Scientific Glass Training Centre, Guindy is selected by the Selection Committee and approved by the Director of Industries and Commerce, Madras is appointed as Glass Blower in the Training cum Production Centre for Scientific Glass Apparatus, Coimbatore on a salary of Rs.200/- in the scale of Rs.200-5-250-10-300 with all allowances applicable to similar categories of staff.

He should report for duty before the undersigned on or before 8.8.1973. He is not eligible for any T.A. for his journey.'

4. The petitioner was relieved from duty on 07.08.1973 under proceedings bearing No.2500/A/73, dated 07.08.1973 and was selected by the selection committee for the post of Neon-sign



Bender under proceedings bearing No.751/GU/73 dated 27.02.1974, on the following terms:

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'1.Thiru G.Viswanathan,

Glass Blower,

Training cum Production Centre

for Scientific Glass Apparatus,

Coimbatore 641 018.

Posted as Neon-sign
Bender

on a salary of Rs.250/-
in the

scale of Rs.250-10-400
with

all other allowances
applicable

to the similar

categories of Staff.'

5 His appointment was provincialised under G.O.No.51 dated 14th January 1977, brought to regular establishment and permitted various benefits as admissible to non-gazetted Government servants. The relevant Clause of the aforesaid G.O. reads as follows:

'FINANCE (F.R. II) DEPARTMENT
G.O.No.51, dated 14th January 1977

WORK-CHARGED ESTABLISHMENT-Public Works, Highways and Rural Works and other Government Departments-Bringing into regular establishment-Orders-Issued.

READ - the following papers:-

(1)G.O.Ms.No.95, Public Works Department, dated 9th January 1971.

(2)G.O.Ms.No.874, Public Works Department dated 30th May 1973.

(3)G.O.Ms.No.450, Public Works Department, dated 4th April 1974.

(4)G.O.Ms.No.912, Public Works Department, dated 22nd June 1976.

Order-No. 51, Finance (F.R. II), dated 14th January 1977.

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5. (i) All provincialised work-charged employees who are in the pay scales of Rs.140-3-155-4-175-5-210 and above will be brought to regular establishment and consequently be allowed the following additional



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benefits as admissible to the Non-Gazetted Government servants.

(a) Pension, Family Pension, Death-cum-Retirement Gratuity as admissible under the Madras Liberalised Pension Rules;

(b) Accumulation of earned leave upto 180 days instead of 90 days; medical and other unearned leave benefits as admissible under Tamil Nadu Leave Rules;

(c) General Provident Fund in lieu of Contributory Provident Fund;

(d) Maternity Leave.

(ii) All provincialised work-charged employees who are in the scale lower than Rs.140-3-155-4-175-5-210 will be brought to regular establishment and consequently be allowed the following additional benefits as applicable to the Last Grade Government servants.

(a) Pension, Family Pension, Death-cum-Retirement Gratuity as admissible under the Madras Liberalised Pension Rules;

(b) General Provident Fund in lieu of Contributory Provident Fund;

(c) Leave benefits as admissible under Tamil Nadu Leave Rules;

(d) On completion of 15 years of service they will become eligible for the leave benefits admissible to Non-Gazetted Government servants;

(e) Maternity Leave.

(iii) The Government contribution portion of the accumulation in the Contributory Provident Fund of the Provincialised work-charged personnel together with interest thereon may be remitted back to the Government account and the subscription of the employees with interest thereon be transferred to the General Provident Fund Account.'

6.The eligibility to pension was also granted to him under Memorandum No.22478/Pension/77-1 dated 16.02.1977 issued by the Government of Tamilnadu, Finance (Pension) Department, which, at Clause-III thereof, issues a clarification in regard to point (iii) in G.O.No.51 cited above, to the effect that personnel whose services had been provincialised would be eligible for pension under the Madras Liberalised Pension Rules.

7. Incidentally, the petitioner appears to have applied for sanction of medical leave and was informed by the Director of



Industries and Commerce/R3 that the sanction of medical leave was pending decision to be taken regarding regularisation of his services.

8. Vide proceedings bearing Rc.No.119837/EDS4/S1 dated 31.08.1981, the petitioner was transferred to the Scientific Glass Training Centre, consequent upon the closure of the Neon Sign Scheme and appointed as a Glass Blower, which post carried the same pay scale of Rs.400-15-490-20-650-25-700 under work charged establishment.

9. Ultimately by G.O.Ms.No.301, Industries, dated 26.03.1985, the Government Scientific Glass Training Centre was ordered to be closed on account of its becoming unviable and uneconomic and also in view of administrative problems that it was facing. Accordingly several posts of semi- and skilled workers watchman including glass blower stood disbanded. Persons holding the aforesaid posts were directed to be retrenched on payment of retrenchment compensation. The 17 workers who had been disbanded and retrenched were ordered to be given preference in the matter of recruitment in other Government Departments/Units/State Public Sector in relaxation of the usual procedure prescribed for recruitment therein.

10. The aforesaid G.O. clarified at point-4, that any appointments made by virtue of the aforesaid relaxation will be in the nature of fresh appointment and in the applicable scales of pay and conditions as may be prescribed. They were to be treated on par with other new recruits to such posts.

11. The G.O. is challenged in the present writ petition and is extracted in full:

'GOVERNMENT OF TAMILNADU
ABSTRACT

INDUSTRIES-Government Scientific Glass Training Centre, Guindy-Closure of Production Wing Ordered-Absorption of retrenched workers in other Government Department/Public Sector units instructions issued.

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INDUSTRIES DEPARTMENT

G.O.Ms.No.348

Dated 9.4.85

G.O.Ms.No.301, Industries dated 26.3.85.

ORDER:

In the G.O. read above, the Government have ordered the closure of the production wing of the Government Scientific Glass Training Centre, Guindy



due to its uneconomic working and also in view of certain administrative problems. The following posts have also been ordered to be disbanded, among others:-

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1.Glass Blower (Rs.400-	1
2.Skilled worker (395-415)	1
3.Skilled worker Grade-II (250-400)	5
4.Semi-skilled workers (Rs.250-400)	9
5.Watchman (Rs.200-300)	1

Total	17

As a result of the above orders, persons holding the above posts are to be retrenched on payment of retrenchment compensation along with other dues as per provisions of labour laws. The Government after careful consideration of the long years of the Government service put in by the personnel have decided that they should be provided with alternative jobs in other Government Departments/Units.

3.The Government accordingly direct that the 17 workers of the Government Scientific Glass Training Centre, Guindy ordered to be retrenched in the GO read above should be given preference in the matter of recruitment in the various Government Department/Units/State Public Sector under taking getting financial Assistance from Government in relaxation of usual procedures prescribed for requirement/appointment and sponsorship by Employment exchange.

4.These appointments will be in the nature of fresh appointments and in the scales of pay and with the conditions of service as may be prescribed for the posts for which the recruitments are made. They will be treated on par with the other new recruits to such posts. The Government also consider that relaxation in age experience of educational qualifications may be given to the extent necessary if the candidates are otherwise found suitable.

5.The Industries Commissioner and Director of Industries and Commerce is requested to take necessary follow up action with reference to the instructions issued in para 3 and 4 above, and send monthly progress report regarding absorption of retrenched workers.



6.This order issues with the concurrence of Employment services Department vide its U.O.No.6090 (a)Secy./85-1 dt. 30.3.85.'

12.Para-4 is specifically relied upon by Mr.Selvaraj to point out that the recruitment of the petitioner in the TNEB was only as a fresh appointment and his claim for taking into account his previous service in the Industries Department is not liable to be accepted, in light of the plain language of the G.O.

13.There had been various representations prior to passing of the impugned G.O., when the petitioner has been in communication with the Department regarding both the status of the employment as well as the benefits that he laid claim to. It is while those representations were pending consideration that the impugned G.O. has come to be passed disbanding the Unit.

14.The petitioner was thereafter absorbed in the TNEB and has been appointed as a Supernumerary Inspector of Assessment. He retired on attaining superannuation on 31.05.2008. He claims that in computing his retirement benefits, the period of service with the Industries Department must be taken into account, which claim has come to be rejected by R4 vide impugned order dated 19.07.2008 based solely upon paragraph-4 of the impugned Government Order.

15.At the outset, it is relevant to state that the petitioner's case is not an isolated one and there have been other instances where, initially, the claim of other identically placed employees had come to be rejected by their respective departments.

16.The petitioner has also placed on record, instances of employees transferred from the Department of Geology in whose cases the said Department had itself recommended that their services be taken into consideration while computing the terminal benefits due.

17.Mr.Selvaraj would argue that merely because the Department of Geology had adopted a generous view does not mean that the Board must as well. However, Mr.P.Subramanian, appearing for the Board, fairly does not put forth any objection to accepting the petitioner's claim, subject to the necessary service particulars being produced by R3.

18. In my order dated 14.09.2021, paragraph-4, I had recorded that R4 concurs with the position that the services of the petitioner in the Industries Department must be taken into



account in computing the benefits due to the petitioner. The difficulty arises on account of the fact that the Board has been unable to quantify the services put in by the petitioner in the Industries Department as, R3 states in its counter that the service record of the petitioner as a Glass Blower in the Industries Department has been washed away by the floods.

19. My order dated 14.09.2021 reads thus:

Heard Mr.A.L.Namasivayam, learned counsel for the petitioner, Mr.C.Selvaraj, learned counsel for Industries Department/R1 to R3 and Mr.P.Subramanian, learned Standing Counsel for the Tamil Nadu Electricity Board/R4.

2. The petitioner challenges an order passed by R4 rejecting his request for inclusion of 16 years of service in the Industries Department for the purpose of computation of pension payable to him. The impugned order dated 19.07.2008 has been passed by R4 relying upon G.O.Ms.No.348 (Industries Department), specifically paragraph 4 which states that those candidates who have been absorbed in the Electricity Department having been retrenched in other Departments will be treated as new recruits in the Electricity Department. Thus, according to R4, only the service of 22 years rendered by the petitioner in the Electricity Department will be counted for the purpose of computation of pension.

3. Mr.Namasivayam, places on record two orders of this Court in W.P.Nos. 11801 of 2013 dated 25.04.2013 and 13314 of 2013 dated 02.12.2020, wherein the Transferee Department, viz., Department of Geology and Mining, after directions issued by this Court in Writs of Mandamus sought for by the petitioners, has accepted those petitioners' claim for inclusion of service in their parent Departments for the purpose of computation of pension vide proceedings Rc.No.1121/PM2/2019 dated 30.05.2019 and Rc.No.4611/PD2/2021 dated 02.09.2021.

4. Confronted with these documents, Mr.Subramanian would fairly agree that the services of the petitioner in the Industries Department will be taken into account by R4 in computing the pension due to him. However, as per counter dated 13.08.2021 filed by R4, specifically para 7, R3,



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who was approached for the service details of the petitioner in the Industries Department, has, by letter dated 29.05.2013, stated that the service register of the petitioner was damaged and all the entries were erased on account of the flood that had taken place and hence the past service in the Industries Department was not ascertainable.

5. The ball now lies in the Court of R3 to obtain the service details of the petitioner in the Industries Department. If the Industries Department is unable to provide the same, this Court proposes to adopt the service details as set forth in the affidavit filed in support of the Writ Petition that contains all details in regard to the petitioner's service in the Industries Department.

6. This would be appropriate, since counters have been filed by R3 and R4 and no aberrations or errors have been found or pointed out in regard to the service details of the petitioner in the Industries Department as set forth in the writ affidavit.

7. List on 24.09.2021 as item No.1 to await the aforesaid particulars.'

20. Today, the position is no different and Mr. Selvaraj would express his inability to produce any records in connection with the petitioner's employment with the Industries Department, though the factum of his employment is a question of record and is not disputed.

21. In line with my suggestion in paragraphs 4 & 5 of order dated 14.09.2021, the quantum of service of the petitioner in the Industries Department be computed as per the compilation of documents filed on 29.07.2021, that have been supplied to both the learned respondent counsels and let the pension and pensionary benefits be computed so as to include his service for the period 12.02.1969 till 1986, when he joined the TNEB. The amount so computed as aforesaid shall be paid over within a period of eight weeks from today positively as the petitioner is a senior citizen as on date.

22. The necessary service particulars as contained in compilation dated 29.07.2021 shall be forwarded to the concerned authorities by the learned Government Counsel forthwith to enable the authorities to forward the necessary approvals/sanctions to R4 for immediate action in the matter. It



is reiterated that the entire exercise shall be completed within a period of eight weeks from today.

23.This writ petition is allowed. No costs.

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Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

vs

To

1. The Secretary to Government,
Energy Department, Fort St. George, Chennai-9.
2. The Secretary to Government,
Industries Department, Fort St. George, Chennai-9.
3. The Special Commissioner &
Commissioner of Industries & Commerce,
Chennai-600 005.
4. The Chairman,
Tamil Nadu Electricity Board, Chennai-600 002.

+1cc to Mr.AL.Namasivayam, Advocate, S.R.No.49951

+1cc to Mr.P.Subramanian, Advocate, S.R.No.49645

+1cc to the Government Pleader, S.R.No.49762

W.P.No.20949 of 2008

GJ(CO)
SU(12/11/2021)