



WEB COPY



Order dated : 07.07.2022
Writ Petition No.17666 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2022

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

Writ Petition No.17666 of 2014
and
M.P.No.1 of 2014

V.Ramamurthy

... Petitioner

Vs.

1.The Secretary to Government,
Energy (B2) Department,
Secretariat, Fort St.George,
Chennai - 600 009.

2.The Chief Engineer/Personnel
NPKRR Maaligai,
No.800, Anna Salai,
Chennai - 600 002.

3.The Managing Director,
Tamil Nadu Housing Board,
Nandanam, Chennai.

... Respondents

PRAYER:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent dated 20.09.2013 in letter No.8794/B2/2003-20 and quash the same and direct the first respondent to consider the case of the petitioner by counting



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the service rendered by him with the third respondent from 12.09.1970 to 11.06.1976 as pensionable service.

For Petitioner : Mr.A.R.Nixon
For Respondents : Mrs.R.L.Karthika,
Government Advocate [R1]
Mr.P.Subramanian [R2]
Mr.D.Veerasekaran [R3]

ORDER

The order of rejection dated 20.09.2013 rejecting the claim of the petitioner to count the period of regular services rendered by him as Section Officer in the Tamil Nadu Housing Board for the purpose of calculation of qualifying service is under challenge in the present writ petition.

2. The facts in nutshell to be considered are that:

2.1. The petitioner joined as Work Assistant in the Tamil Nadu Housing Board on 12.09.1970 on consolidated pay. On 22.10.1970, the petitioner participated in an interview conducted by the Tamil Nadu Electricity Board for selection and appointment to the post of Junior Engineer and the petitioner was selected. However, no posting order was issued by the Tamil Nadu Electricity Board in the year 1970. Therefore, the petitioner continued as Work Assistant in the Tamil Nadu Housing Board on consolidated pay basis. Thereafter, the



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petitioner was regularly appointed as Section Officer in the Tamil Nadu Housing Board in the time scale of pay on 28.11.1973. He served as Section Officer as regular employee in the Tamil Nadu Housing Board till 11.06.1976. Thereafter, the Tamil Nadu Electricity Board issued an appointment order based on the selection of the year 1970 and the petitioner, for the purpose of joining in the Tamil Nadu Electricity Board, resigned his job in the Tamil Nadu Housing Board and joined as Junior Engineer in the Tamil Nadu Electricity Board on 21.06.1976.

2.2. The petitioner served in the Tamil Nadu Electricity Board from the year 1976 to 1998 and before his retirement, he made a representation on 05.08.1998 to count the period of services rendered by him in the Tamil Nadu Housing Board as qualifying services for the purpose of settlement of pensionary benefits. On 10.11.1998, the Tamil Nadu Housing Board sent a communication stating that he had not contributed towards pension. The Tamil Nadu Electricity Board sent a letter dated 30.09.2003 to the Tamil Nadu Housing Board stating that the petitioner himself will pay the contribution. Thereafter, the Tamil Nadu Housing Board sent a letter on 27.08.2004 stating that they will not consider the case of the petitioner. Therefore, the case of the



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petitioner was rejected merely on the ground that he resigned the post of Tamil Nadu Housing Board and joined in the Tamil Nadu Electricity Board thereafter and hence, his resignation amounts to forfeiture of his past services and thus, the claim of the petitioner will not be considered. The petitioner approached the first respondent Government, who, in turn also rejected the claim of the petitioner on the same ground that the petitioner resigned his job in the Tamil Nadu Housing Board. Thus, the petitioner is constrained to move the present writ petition.

3. Learned counsel appearing for the second respondent/Tamil Nadu Electricity Board raised an objection by stating that the petitioner resigned his job in the Tamil Nadu Housing Board and joined in the Tamil Nadu Electricity Board. An employee, who resigned his job is not entitled to reckon the qualifying services and therefore, this writ petition is to be rejected.

4. Learned counsel appearing for the third respondent/Tamil Nadu Housing Board made a submission that the petitioner was initially appointed on consolidated basis. However, he was subsequently absorbed as Section Officer in the time scale of pay. He served for about three years as Section Officer and



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in order to accept the appointment in the Tamil Nadu Electricity Board, the petitioner resigned his job in the Tamil Nadu Housing Board and therefore, the petitioner is not entitled to claim any further benefit and more so, the Tamil Nadu Housing Board cannot contribute anything towards such services as no recoveries are made towards such contribution.

5. Rule 23 of the Tamil Nadu Pension Rules stipulates forfeiture of service on resignation. Rule 23(1) contemplates that resignation from a service or post entails forfeiture of past service. However, the proviso clause contemplates that "provided that a resignation shall not entail forfeiture of past service if it has been submitted to take up with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies." Therefore, the case of the petitioner is to be considered under the proviso to 23(1) of the Tamil Nadu Pension Rules as the facts remain that the petitioner joined in the Tamil Nadu Housing Board on consolidated pay and served till 12.07.1970. He participated in the interview conducted by the Tamil Nadu Electricity Board on 22.10.1970 with the permission of the Tamil Nadu Housing Board. Thereafter, the petitioner had not received any appointment order from the Tamil Nadu Electricity Board and he continued in the Tamil



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Nadu Housing Board as Work Assistant and the Tamil Nadu Housing Board had subsequently absorbed the petitioner as Section Officer in the regular time scale of pay on 28.11.1973. The petitioner worked till 11.06.1976 and after getting the posting order from the Tamil Nadu Electricity Board, he resigned his job for the purpose of taking up the job in the Tamil Nadu Electricity Board and joined accordingly. Therefore, the petitioner has obtained prior permission from the Tamil Nadu Housing Board for the purpose of accepting the job of the Tamil Nadu Electricity Board and on receipt of the posting order from the Tamil Nadu Electricity Board, he resigned his job for technical reasons and accordingly, joined in the Tamil Nadu Electricity Board.

6. The Government, in its letter dated 05.12.2007, addressed to the Tamil Nadu Electricity Board stated that "whether the application of Thiru.V.Ramamoorthy (petitioner herein) for direct appointment in the TNEB at Ennore Thermal Power Station was forwarded thro' proper channel and whether the resignation was tendered just to meet the technical requirements." However, the consequential report was not communicated to the petitioner pursuant to the aforesaid letter dated 05.12.2007. The facts and circumstances as narrated by the petitioner would reveal that he has informed the Tamil Nadu Housing Board



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for the purpose of participating in the process of selection and he was working in the Tamil Nadu Housing Board as regular employee for about three years i.e. from 28.11.1973 to 11.06.1976 and subsequently, on receipt of the posting order, he joined in the Tamil Nadu Electricity Board. Therefore, the case of the petitioner falls under proviso to Rule 23(1) of the Tamil Nadu Pension Rules and thus, he is entitled to the relief of counting the regular service rendered by him in the Tamil Nadu Housing Board as qualifying service for the purpose of pensionary benefits and revised pension.

7. The reason stated in the impugned order is not candid in view of the fact that the order is not speaking and cryptic in nature and further, the details regarding the service rendered by the petitioner both in the Tamil Nadu Housing Board and in the Tamil Nadu Electricity Board are not considered properly by the respondents.

8. With reference to the consolidated pay, the services of the petitioner as Work Assistant in the Tamil Nadu Housing Board from 12.07.1970 to 27.11.1973, the petitioner is at liberty to approach the authorities for counting of 50% of the services in view of the amended Rule 11(4) of the Tamil Nadu



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Pension Rules and the eligibility, in this regard, shall be independently considered by the authorities competent within a period of twelve weeks from the date of receipt of a copy this order.

9. Relying on the letter dated 30.09.2003, learned counsel for the Tamil Nadu Electricity Board made a submission that in respect of the contribution for the services rendered in the Tamil Nadu Housing Board, the petitioner will meet out the same. In view of the said letter, the petitioner has to pay contribution for the services rendered by him in the Tamil Nadu Housing Board to the Tamil Nadu Electricity Board for the purpose of recalculating the terminal and pensionary benefits.

Accordingly, this Writ Petition is allowed and the order impugned passed by the first respondent dated 20.09.2013 in letter No.8794/B2/2003-20 is quashed and the second respondent is directed to count the services of the petitioner rendered by him in the Tamil Nadu Housing Board as a regular employee from 28.11.1973 to 11.06.1976 as qualifying services for the purpose of settlement of terminal and pensionary benefits to the petitioner. Consequently, the second respondent is directed to recalculate the terminal and



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pensionary benefits and revise the pension and pay the arrears as expeditiously as possible, preferably, within a period of four months from the date of receipt of a copy of this order. No costs. Connected miscellaneous petition is closed.

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Index : Yes
Speaking order
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To

- 1.The Secretary to Government,
Energy (B2) Department,
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- 2.The Chief Engineer/Personnel
NPKRR Maaligai,
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- 3.The Managing Director,
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S.M.SUBRAMANIAM., J



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