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W.P.No.32104 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.32104 of 2019

and

W.M.P.No.32364 of 2019

S.Paulsamy

... Petitioner

Vs.

1.The Chief Engineer/Personnel,
Tamil Nadu Generation & Distribution Corporation Ltd.,
(Administrative Branch),
8th Floor, N.P.K.R.R. Maaligai,
144, Anna Salai, Chennai -600 002.

2.The Superintending Engineer,
Tamil Nadu Electricity Board,
Kadamparai Circle, Minparai Adakatti,
Aazhiar Nagar Post,
Valparai Taluk,
Coimbatore – 642 101.

3.The Assistant Executive Engineer,
Electrical Maintenance,
Tamil Nadu Electricity Board,
Kadamparai Power House,
Coimbatore – 642 101.

... Respondent



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Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus, directing the Respondents to grant the Petitioner's pension and other pensionary benefits by counting the temporary service rendered by him with all consequential benefits with interest.

For Petitioner : Mr.Bharani Chander
for Mrs.S.Meenakshi

For Respondents : Mr.P.Subramaniam
for TANGEDCO

ORDER

The relief sought for in the present writ petition is to direct the respondents to count the temporary services of the writ petitioner for the purpose of calculation of the qualifying services and for grant of pensionary benefits.

2.The petitioner states that he joined as a contract labourer in the year 1984 in the Tamil Nadu Electricity Board and contract services continued up to the year 2000. Thereafter, the petitioner was discharged from service. He rejoined as daily wage employee and served till the year 2004. Thereafter, the petitioner was appointed as a Helper on regular basis. After completing ten



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years of regular service, the petitioner was allowed to retire from services on 30.06.2015 as Fitter Grade II on attaining the age of superannuation.

3.The grievances of the writ petitioner is that his services were regularized w.e.f. 01.01.2004 and temporary contract services are to be taken into consideration for the purpose of calculating the qualifying services for grant of pensionary benefits.

4.The learned counsel appearing on behalf of the respondents made a submission that the contract services rendered by the employees with the private contractors cannot be taken into consideration for the purpose of calculating the qualifying services.

5.The issue in this regard are considered and decided by the Division Bench of this Court in W.A.(MD)No.785 of 2015, dated 28.10.2015.

8.Insofar as the present case is concerned, we find that neither G.O.Ms.No.408, Finance (Pension) Department, dated 25.08.2009 nor the Board's Proceedings No.31, dated



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08.09.2011, would come to the benefit of the respondent/writ petitioner and in terms of Rule 11 of the Tamil Nadu Pension Rules, 1978, which clearly provides that the commencement of qualifying service of a Government servant will be the date on which he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity. In the case on hand, appointment has not been made in respect of the present respondent/writ petitioner till 01.05.1999. He is not entitled to seek inclusion of the period of service as member of society for the purpose of pensionary benefits in the absence of rule or otherwise.

9. On an allegation of arbitrariness and unfair treatment, we called upon Mr. Karthick, learned counsel for the appellants to produce the records and justify that in all cases where the absorbed employees fell short of qualifying service they have been uniformly treated by declining the grant of pension. In order to dispel this plea and to prove that there is no arbitrariness or unfair treatment to one or other person, more particularly the respondent, Mr. Karthik, learned counsel for the appellants produced the details of all the employees who were absorbed on 01.05.1999 and who had qualifying service between 2 to 9 years and were not extended the said benefit. Accordingly, we hold that the order of the learned Single Judge



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directing appellants to consider the period of service as member of the Society for pensionary benefits is erroneous.

10.In the result, the writ appeal is allowed and the impugned order is set aside. The respondent/writ petitioner will be entitled to make a representation to the Board in the light of what we have indicated earlier to consider his plea and similarly placed persons for grant of pensionary benefits de hors the government order and board proceedings, as above. No Costs. Consequently, connected miscellaneous petition is closed.

6.In view of the fact that the issues raised in the present writ petition are no more *res integra* and the contract services rendered by these employees with the private contractors cannot be taken into consideration for calculation of qualifying services for grant of pensionary benefits. The relief as such sought for in the present writ petition deserves no merit consideration.

7.Accordingly, this writ petition stands dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

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Index:Yes



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Internet: Yes
Speaking order
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S.M.SUBRAMANIAM, J.

SSR

To

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