



WEB COPY



W.P.No.35367 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.35367 of 2019

K.Velan

... Petitioner

Vs.

1.The Chairman,
Tamil Nadu Electricity Board, TANGEDCO,
144, Anna Salai, Chennai -600 002.

2.The Chief Engineer,
Tamil Nadu Electricity Board, TANGEDCO,
144, Anna Salai, Chennai -600 002.

3.Superintending Engineer,
Karamparai Power Generation Circle,
Minparai Post, Valparai Taluk,
Coimbatore District – 642 101.

4.The Executive Engineer,
The Office of the Executive Engineer,
Tamil Nadu Electricity Board,
Navamalai – 642 119.

... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus, calling for records pertaining to the order Ka.No.001686/Me/Po/Ka.Mi.U.Va/Min/NiPi.3/Ni. U2/ Ko.Thani/19, dated 08.11.2019 issued by the 3rd respondent, quash the same



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as illegal and consequently direct the respondents to add half of the petitioner's temporary service with his regular service and to grant him pension and other retirement benefits.

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

For Respondents : Mr.P.Subramaniam
for TANGEDCO

ORDER

This writ petition was filed calling for records pertaining to the order Ka.No.001686/Me/Po/Ka.Mi.U.Va/Min/NiPi.3/Ni. U2/ Ko.Thani/19, dated 08.11.2019 issued by the 3rd respondent, quash the same as illegal and consequently direct the respondents to add half of the petitioner's temporary service with his regular service and to grant him pension and other retirement benefits.

2.The petitioner states that he joined as a contract labourer in the year 1992 in the Tamil Nadu Electricity Board and in the course of his temporary service by the order dated 11.01.2002 the Board absorbed him into regular service as Helper. After completing 8 years 6 months of regular service, the petitioner was allowed to retire from services on 30.06.2009 as Carpenter Grade II on attaining the age of superannuation.



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3.The grievances of the writ petitioner is that his services were regularized w.e.f. 01.04.2003 and temporary contract services are to be taken into consideration for the purpose of calculating the qualifying services for grant of pensionary benefits. However, the petitioner's representation in this regard was rejected by the 3rd respondent by the impugned order dated 08.11.2019.

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 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



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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 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



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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.

10.10.2022

Index:Yes
Internet:Yes
Speaking order
SSR



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S.M.SUBRAMANIAM, J.

SSR

To

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