



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.02.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD)No.15030 of 2012

Vannia Perumal

... Petitioner

vs.

1.The Chief Engineer,
Tamilnadu Generation & Distribution
Corporation,
KRR Maligai, 1st Floor,
144, Annasalai,
Chennai- 600 002.

2.The Superintending Engineer,
Tuticorin Electricity Distribution Circle,
Tuticorin.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records in Letter No.050981/271/g19/g192/2012/I, dated 13.06.2012 and Ka.No.017710/303/NiPi.2/UA/Ko/Thani/2012, dated 25.06.2012, issued by the respondents to quash the same and consequently to direct the respondents to grant pension to the petitioner by treating the service as per Para 5(a) of the B.P. (F.B.) No.27, dated 07.11.2002.

For Petitioner : M/s.D.Geetha
For Respondents : Mr.S.Arivalagan
Standing Counsel

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the Letter No.050981/271/g192/2012/I, dated 13.06.2012 and Ka.No.017710/303/NiPi.2/UA/Ko/Thani/2012, dated 25.06.2012, issued by the respondents and consequently to direct the respondents to grant pension to the petitioner by treating the service as per Para 5(a) of the B.P.(F.B.) No.27, dated 07.11.2002.

2.The petitioner was working as a Contract Labour in the respondent establishment. As per Justice Khalid Commission Report, the petitioner was regularized in service and appointed as Helper in regular establishment on 01.05.1999. The petitioner had put in service as Contract Labour from 16.06.1993 to 30.04.1999. Since the petitioner has submitted bogus education certificate, the petitioner was dismissed from service on 12.10.2001. Thereafter, based on Per B.P. (F.B) No.27, Administrative Branch dated 07.11.2002, the



petitioner was again taken into service, but the period of 2 years 7 months and 2 days are considered as loss of pay without medical certificate. After reinstatement, the petitioner has continued in service until his superannuation, i.e., until 30.06.2011. The petitioner submitted a representation seeking pension and the same was rejected after perusing the service records of the petitioner, wherein it is stated that the petitioner is having 9 years 6 months 28 days as eligible service in the Board and is not having 10 years of service and so the petitioner is not entitled to pension. The petitioner submitted an additional affidavit stating that since the petitioner has put in service as a Contract Labour from 16.06.1993 to 30.04.1999, the same can be taken into consideration and 50% service can be taken under Rule 11 (4) of Tamil Nadu Pension Rules.

3. The respondents have filed a counter affidavit reiterating the rejection order.

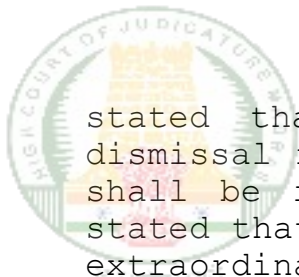
4. On perusal of Tamil Nadu Pension Rules, 1978 it is seen under Rule 11(4) it is stated that the service of non-provincialized service, consolidated pay, honorarium or daily wages basis shall be taken for calculating 50% service. But under Rule 2, there is a specific bar to consider the "Contract Labour" service. The relevant rule is extracted hereunder:

"2. Application. - Save as otherwise provided in these rules, these Rules shall apply to all Government Servants appointed to Services and posts in connection with the affairs of the State which are borne on pensionable establishments, whether temporary or permanent, but shall not apply to -

- (a) Persons in casual and daily rated employment;
- (b) Persons paid from contingencies;
- (c) Persons employed on **contract** except when the contract provides otherwise;
- (d) Members of the All-India Services;
- (e) Persons entitled to the benefit of a Contributory Provident Fund;
- (f) Persons who are entitled to the benefits under the Factories Act, 1948 and the Employees Provident Fund Act, 1952 excluding those who are governed by Statutory Service Rules and belong to pensionable service."

Therefore, this Court is of the considered opinion that Tamil Nadu Pension Rules, cannot be applied to the present case.

5. The respondents contended that the service of 2 years 7 months 2 days cannot be considered, since as per the Per B.P. (F.B) No. 27, Administrative Branch dated 07.11.2002, where it has been



stated that under Clause 6, if the punishment of removal or dismissal from service is imposed, the suspension and absence period shall be regularized as per para 5. Under para 5, it has been stated that the period of absence will be regularized by sanctioning extraordinary leave by credit and the balance as extraordinary leave without pay and allowances, the subsistence already paid will be adjusted for extraordinary leave at credit and the balance alone will be recovered at easy installments. In this case, the petitioner was dismissed from service and therefore, the respondents have considered this period of absence of 2 years, 7 months and 2 days as extraordinary leave and loss of pay.

6.This Court is of the considered view that the Rule has statutory force. As far as B.P. proceedings are concerned, even though it is considered as having statutory power, when compared with Tamil Nadu Pension Rules, Pension Rules will prevail over the BP proceedings. Therefore, this Court is of the considered opinion that the period of extraordinary leave may be considered for rounding off the 9 years 6 months and 28 days. Moreover, under Pension Rules, if there is 9 years 9 months, there is a provision under Rule 43(3) for rounding off. Since only 3 months is left out, this Court is rounding off the 9 years 6 months and 28 days as 10 years. Therefore, this Court is directing the respondents to pay pension for the 10 years period. The said exercise shall be carried out within a period of 8 weeks from the date of receipt of a copy of this order.

7.With this direction, the Writ Petition is disposed of. No costs.

Sd/-

Deputy Registrar (LA&MC)

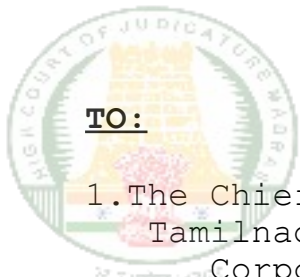
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/ /2022

Sub Assistant Registrar(CS)

Tmg

Note:In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.



TO:

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2.The Superintending Engineer,
Tuticorin Electricity Distribution Circle,
Tuticorin.

+1 CC to M/s.D.GEETHA, Advocate (SR-6587[F] dated 16/02/2022)

W.P. (MD) No.15030 of 2012
15.02.2022

SB(CO)
GC(08.03.2022) 4P 4C