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W.P.No.2468 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No.2468 of 2020

M.Selvakumar

Petitioner

Vs.

1. Tamil Nadu Generation and Distribution Corporation,
Rep. by its Chairman & Managing Director
No.144, NPKRR Maaligai, Anna Salai,
Chennai - 2.
2. The Chief Engineer (Personnel)
Tamil Nadu Generation and Distribution Corporation,
No.144, Anna Salai, Chennai - 2.
3. The Superintending Engineer,
Tamil Nadu Electricity Distribution Circle,
Thirupattur Electricity distribution Circle,
Thirupattur.

Respondents

Writ Petition filed under Article 226 of the Constitution of India,
praying for issuance of a writ of certiorarified mandamus, calling for the
entire records relating to the impugned order passed by the third respondent
vide letter No.287/Ni.P.2/Ni.U.2//Ko.Pension/2019, dated 17.09.2019, and



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quash the same and directing the respondents to include the petitioner under old pension scheme with GPF, which was existing prior to the introduction of the Contributory Pension Scheme.

For petitioner : Mr.S.N.Ravichandran

For respondents : Mr.K.Rajkumar
Standing Counsel for TANGEDCO

ORDER

This writ petition has been filed challenging the order dated 17.09.2019 passed by the third respondent, for a direction to the respondents to include the petitioner under the Old Pension Scheme with GPF, which was existing prior to the introduction of Contributory Pension Scheme.

2. The case of the petitioner is as follows:

2.1. He is a physically disabled person and has disability in his left leg. He studied till PUC but could not pass. He joined as a contract laborer in the Tamil Nadu Electricity Board (TNEB) in the year 1980 at Marandahalli construction, worked there for several years and also under PCB and his employment as contract laborer was continuous and perennial



in nature and was waiting for absorption. At this juncture, his father M.Munusamy who was working as Wireman in the office of Junior Engineer (O&M), Pennagaram, was electrocuted on 07.02.1989, as a result of which, he was medically invalidated and retired from service before attaining the age of 50 years. In order to take care of his father, he could not continue as a contract labour. Hence, he made an application dated 01.02.1992 seeking employment. However the second respondent, *vide* order dated 12.05.1992, rejected his claim on the ground that he had crossed the maximum age limit of 30 years and was not entitled/eligible to appointment. Aggrieved by this order he filed a writ petition being W.P.No.8942 of 1997. This Court, by order dated 17.11.2000, allowed this writ petition.

2.2. The petitioner was with a hope that he would be provided employment by the Board based on the orders passed by this Court. But, no action was taken in this regard and hence, he made a representation dated 19.01.2001 and also sent telegrams dated 27.01.2001 and 11.04.2001. Since there was no response for the representations made, he escalated the issue to the Commissioner, State Commission for Handicapped by a representation



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dated 06.08.2001. Subsequently, the Commissioner, State Commission for Handicapped, *vide* his proceedings in Na.Ka.No. 15771/U.Ma.3-1/2001, dated 25.02.2002, directed the first respondent to provide suitable employment to him. Thereafter, the second respondent, *vide* proceedings dated 31.05.2002, informed him that his request for job assistance on compassionate ground was considered and subject to fulfillment of other suitability conditions, by a letter dated 11.3.2003, he was also directed to appear before the Chief Medical Officer/TNEB, on any Monday at about 1.00pm. As directed, the petitioner appeared and after a lapse of more than 2 and a half years, the second respondent, *vide* memo dated 26.03.2003, informed that his employment was considered, recommended and will be followed by appointment order. Further, based on the memo, the third respondent, *vide* proceedings dated 07.04.2003 and 06.05.2003 directed him to give an undertaking and also produce original educational certificates for appointment which was subsequently submitted for verification.

2.3. The third respondent, by order dated 16.05.2003, appointed him, as a Helper Trainee and he joined on 13.6.2003, his probation was declared



and he was appointed as Helper Trainee in the year 2005. Later, he was promoted as Commercial Assistant in the year 2007 and finally, as Commercial Inspector in the year 2009. He had put in 13 years of service and was superannuated on 29.02.2016. After his appointment as Helper Trainee on 13.06.2003, several request were made to place him under the old pension scheme. However, the third respondent threatened the petitioner, that if any request was made in this regard, he would not be made permanent. Even then, repeated requests were made by him but in vain. Further he approached this Court and by order dated 07.11.2000, writ petition No.8942 of 1997, directed the first respondent to take action within a period of four weeks but the order was not complied with. Only after the intervention of the Commissioner, State Commission for Handicapped, employment was provided. Due to the administrative lapses caused, the petitioner was deprived of the benefits of old pension scheme. If the first respondent had complied with the orders of this Court and appointed him as early as 01.01.2001, the petitioner would have been placed under the old pension scheme.



2.4. The Government in G.O.Ms.No.259 dated 06.08.2003, had introduced the Contributory Pension Scheme retrospectively to the employees who were recruited on or after 01.04.2003 by amending the Pension Rules and by adopting the above said Government Order the Board issued proceedings(per)B.P.(ch)No.264,dated 03.12.2003 and implemented the Contributory Pension Scheme. Further he was considered and recommended for appointment on 26.03.2003 but the order of appointment was issued only on 16.05.2003, i.e., after 01.04.2003 which is the cut off date for the old pension scheme.

2.5. He made several representations requesting to place him under the old pension scheme but they were rejected by the second respondent and the impugned order passed by the third respondent is without jurisdiction, since the second respondent was the competent authority. Further, the impugned order passed by the third respondent is cryptic, perfunctory and mechanical. The learned counsel for the petitioner submitted that the petitioner had made several representations to all the respondents and requested for inclusion of his name in the old pension scheme and the third



respondent, without forwarding the representations to the second respondent had passed the impugned order rejecting his claim. The learned counsel placed reliance on a similar order passed by this Court in *V.Janakiraman vs The Government of Tamil Nadu and others*, setting aside the order of rejection and holding that the petitioner therein ought to have been treated as an employee covered under the old pension scheme for the purpose of pensionary benefits; eventually, the State filed W.A.No.2708 of 2018 and this Court, by order dated 11.12.2018, dismissed the same thereby confirming the order dated 17.11.2017 in W.P.No.9208 of 2012; in the light of the order dated 17.11.2017, the impugned order of the third respondent is liable to be set aside.

3. The learned counsel for the respondents filed a counter affidavit on 04.08.2023 and the relevant portion of the same are extracted hereunder:

“3. The Government of Tamil Nadu has issued G.O (MS) No. 259, Finance (Pension) Department dated 06-08-2003 bringing contributory pension scheme by replacing the existing pension scheme. The effect of the said G.O was from 01-04-2003. Those who have appointed after 01-04-2003 are not entitled to claim pension under the Old Pension Scheme. However on the basis of the contribution



made to the pension scheme, contributory pension will be given to them. The TANGEDCO has adopted the above G.O and issued (Per)B.P.(Ch)No.264 dated 03-12-2003 introducing contributory pension scheme to the TANGEDCO employees who are recruited on or after 01.04.2003. Since the petitioner's appointment to was on 16-05-2003 much after the cut off date of 01-04-2003 he is entitled only for contributory pension and not under the old pension scheme.

4. The respondents submit that the petitioner on his appointment as Helper (Trainee) on compassionate Grounds on 13-6-2003 did not challenge the appointment and agitated for retrospective appointment from the date of issue of Hon'ble High Court order directing compassionate appointment. The petitioner having accepted the appointment without any challenge. At this distance point of time of lapse of 17 years he move this Writ Petition seeking for notional appointment and bring him under the old pension scheme. The Writ petition is hit by laches and no relief could be granted at this distant point of time. The petitioner on one breath wanted Compassionate appointment, and got appointed and retired from service on 29-02-2016 cannot ask for pension after 4 years of retirement.

5. The Respondents deny the averments set out in Para 5, 6, 7 that the third respondent threatened him by stating that he would not be make permanent. The petitioner is put to strict proof of the same. As far as the averments that the Hon'ble High Court has directed in W. P. No. 8942 of 1997 dated 17-11-2000 to adopt G.O (MS) No. 704, Public Service (A) Department dated 15-04-1964 to give relaxation of age by 10 years to the petitioner. Thereafter adopted B.P.(MS) FB No.51 dated 31-05-1994 and pass appropriate orders.



6. It is submitted that as the matter involved relaxation of age the file was under process for submission to the Board for concurrence of relaxation and after obtaining the Board's approval the order of appointment was issued on 16.05-2003 after calling the petitioner to bring all the originals for verification. After completion of all process the appointment to was made. Therefore there is no delay at all on the part of respondents in giving appointment on compassionate grounds.

7. The petitioner not even moved the Writ Petition in the year 2016 immediately after retirement on 29-2-16. He after receiving all the benefits has come forward with the present Writ Petition after the delay of 4 years from the date of retirement seeking to bring the petitioner under old pension scheme."

4. Heard both sides and perused the materials on record.

5. The petitioner is a physically disabled person and his left leg is handicapped. His educational qualification is fail in PUC. He gave an application seeking employment assistance on 01.02.1992 and the second respondent, by order dated 12.05.1992, rejected his claim on the ground that he has crossed the maximum age limit of 32 years and is not entitled to appointment. Aggrieved by the order passed by the second respondent, the petitioner filed a writ petition being W.P.No.8942 of 1997 and this Court by



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order dated 17.11.2000 directed the second respondent to consider his case and provide employment to him within a period of four weeks. The above order was not complied with by the second respondent. Despite several representations given, no action was taken in that regard. Hence, the petitioner approached the Commissioner, State Commission for Handicapped and *vide* his proceedings directed the second respondent to provide suitable employment to the petitioner. Subsequently, the second respondent *vide* proceedings dated 31.05.2002, informed him about the job confirmation subject to fulfillment of suitable conditions and also by a letter dated 11.03.2003, directed him to appear before the Chief Medical Officer/TNEB and after a lapse of two and a half years, the second respondent, *vide* memo dated 26.03.2003 informed about the recommendation, confirmation and appointment and also the third respondent, *vide* proceedings dated 07.04.2003 and 06.05.2003, directed the petitioner to give an undertaking and produce all his original certificates. The petitioner was issued appointment as Helper Trainee on 26.05.2003 by the third respondent and he joined on 13.06.2003. Subsequently, his probation was declared, followed by promotions and finally, he was superannuated on 29.02.2016 as Commercial



Inspector. The petitioner after being appointed as Helper Trainee had given several representations to the third respondent to place him under the old pension scheme but the third respondent did not consider his case.

6. It is relevant to point out that the Government issued G.O.Ms.No.259 dated 06.08.2003 introducing Contributory Pension Scheme retrospectively to the employees who were appointed on or after 01.04.2003. Eventually, by incorporating the Pension Rules and by adopting the above said Government order, the Board has also issued a similar order confirming the same. Since the petitioner was appointed only on 16.05.2003, he was not included in the Old Pension Scheme.

7. **It is pertinent to note that the order was passed by this Court in W.P.No.8942 of 1997 as early as 17.11.2000 and the order of appointment was issued only on 16.05.2003 which is after a delay of two and a half years later, which has resulted in the inclusion of the petitioner in Contributory Pension Scheme introduced by the State Government and no interference is made by the learned Standing**



Counsel for the respondents in this regard. On the other hand, there is also a delay of three years on the part of the petitioner in approaching this Court after his retirement and the representation was given only on 03.08.2019 to the respondents i.e., three and a half years after superannuation i.e., 29.02.2016. But, this cannot be put against the petitioner for the reason that in the impugned order passed by the respondent no where it is mentioned that the petitioner belatedly approached the respondent for inclusion of his name in the Old Pension Scheme. If the order of this Court had been complied with within the stipulated time or within a reasonable period, the petitioner would have been appointed much prior to the introduction of the Contributory Pension Scheme.

8. The learned counsel for the petitioner placed reliance on the following the judgments and the relevant portions are extracted below:

(i) A Division Bench of Kerala High Court in The Chairman State Bank of India Corporate Centre and others vs Unnikrishnan P.C. Rural Marketing and Recovery Officers, State Bank of India and others [year 2021(1) SLR 512 (Kerala)].



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"13. The only remaining question is regarding the effect of the industrial settlements which, according to the learned counsel appearing for the Union, establishes a right in the employees falling under the category of 'workmen', under the industrial Disputes Act, 1947, to receive pension without having to pay any Contribution. The 2014 Regulations clearly provide that no person who enters Service after 01-08-2010 will be entitled to become members of the non-contributory pension fund. We do not deem it necessary to examine as to whether the industrial settlements referred to by the learned counsel for the Union, in fact, provide for or recognize a right to receive a pension under a non-contributory scheme. It is settled law that the terms of an industrial settlement will always be subject to statutory prescription vide *U. Unichoyi v. State of Kerala* (1962) 524 SERVICES LAW REPORTER 2021(1) 1 SCR 946, and *Oswal Agro Furane Lid. v Workers Union*, (2005) 3 SCC 224: (2005(2) SLK 362 (SC)]. The industrial settlements referred to, even if they provide that the employees concerned will be entitled to a pension under a non-contributory scheme, cannot operate against the clear stipulation in the- 2014 Regulations which, are statutory.

14. We, therefore, hold that the introduction of the contributory pension scheme in respect of all employees who entered service of the State Bank of India after 01-08-2010 is legal and valid and the same does not suffer from any legal infirmity. There is no hostile discrimination. The officers/employees who joined after 01-08-2010 clearly formed a separate class. Thus we allow W.A.No .469/2018 and W.A. No. 1729/2019 by setting aside the judgment dated 26-10-2017 in W.P(C) No. 6897/2011 and the judgment dated 12-04-2019 in W.P(C)No. 5105/2013. W.A. No.483/2020 will stand dismissed. Consequently, W.P(C)No. 6897/2011 and W.P(C) No. 5105/2013 will stand dismissed. In the facts and circumstances of these cases, we make no order as to costs.



Order accordingly."

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(ii) A Single Bench judgment order dated 21.09.2017 in W.P.No.12218 of 2010.

"45. Moreover, if we perused the impugned order passed by the respondent, it merely says that the said individual Kalivanan was given retrospective promotion as Basic Health Inspector with the effect from 01.07.1966 and had been retrospectively regularised from the date on which orders have been passed by the Tamil Nadu Administrative Tribunal and the Supreme Court of India, therefore, the same cannot be compared with the case of the petitioner. Nowhere in the impugned order it is stated that the petitioner had approached the respondent belatedly.

46. It is a settled law, whenever orders or proceedings are questioned before the Court of Law, the ingredients and recitals of the orders shall be the matter and the same can alone be considered as sustainable or not in the eye of Law and in this regard, either the orders or proceedings cannot be permitted to be improved qualitatively during the course of hearing of the case either by filing counter affidavit or by way of arguments.

47. This kind of attempt made on the side of the respondent cannot be permitted as per law. In this regard, Law has been well settled in the matter of Mohinder Singh Gill and another V.The Chief Election Commissioner, New Delhi and others reported in 1978 SCR (3) 272.

48. Therefore, this Court feels that even according to the impugned order, the plea of delay and laches had not been raised at all by the respondents. The said plea as has been



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mainly projected by the citing the decision of this Court and similar orders passed by the learned Single Judge, would no way helpful to the respondents in this case and therefore, the issue of delay and laches raised by the respondents is hereby rejected."

9. In view of the above factual matrix of the case and the ratio laid down by the Hon'ble Supreme Court, this Court is of the considered view that the impugned order passed by the third respondent *vide* letter No.287/Ni.P2/Ni.u.2//Ko.Pension/2019, dated 17.09.2019, is liable to be quashed and the same is accordingly quashed.

In the result, the writ petition is allowed. The respondents are directed to include the petitioner under old pension scheme with GPF, which was existing prior to the introduction of the Contributory Pension Scheme dated 01.04.2003 within a period of eight weeks from the date of a copy of this order. No costs.

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vca

Index : Yes/No

Speaking Order : Yes/No



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To

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