



W.P. Nos.8650/20014 – 29174/2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
31.07.2023	08.08.2023

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.8650 OF 2014 & 29174 OF 2016

AND

M.P. NO. 1 OF 2014 & W.M.P. NO. 25586 OF 2016

The Superintending Engineer
Tamil Nadu Generation & Distribution
Corporation Ltd.
Thiruvannamali Electricity Distribution Circle
Thiruvannamalai.

.. Petitioner

- Vs -

1. R.Krishnan (Decd.)

.. R-1 in WP 8650/14
& R-2 in WP 29174/16

2. The Presiding Officer
Addl. Labour Court
Vellore District, Vellore.

.. R-1 in WP 29174/16
& R-2 in WP 8650/14

3. K.Manimegalai
4. K.Premnath
5. K.Arivazhagan
6. K.Poonkuzhali
7. K.Kokilavani

.. RR-3 to 7 in both WPs



W.P. Nos.8650/20014 – 29174/2016

WEB COPY

W.P. No.8650 of 2014 filed under Article 226 of the Constitution of India

praying this Court to issue a writ of certiorari to call for the records relating to the award passed by the 2nd respondent, viz., Principal Labour Court, Vellore, made in Computation Petition No.215 of 2007 dated 31.08.2010 and quash the same.

W.P. No.29174 of 2016 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari to call for the records relating to the award passed by the 2nd respondent, viz., Principal Labour Court, Vellore, made in Computation Petition No.215 of 2007 dated 31.08.2010 and quash the same.

For Petitioner : Mr. Anand Gopalan for
M/s. T.S.Gopalan & Co.

For Respondents : Mr. S.N.Ravichandran for RR-3 to 7

COMMON ORDER

Assailing the order passed by the Addl. Labour Court ordering the petitions filed u/s 33-C (2) of the Industrial Disputes Act and directing the petitioner to pay the monetary amount, as quantified in the said petitions therein, the present writ petitions have been filed.



W.P. Nos.8650/20014 – 29174/2016

WEB COPY

2. It is the case of the petitioner that the 1st respondent in W.P. No.8650/14, since deceased (for brevity, will be referred to as 'workman'), was employed as a contract labour from 1980 and worked under the petitioner till 3.2.1998. Thereafter, his services were regularised as per the orders of the Supreme Court from 3.3.1998. Subsequently, the petitioner attained superannuation and retired on 31.8.2007.

3. It is the case of the workman that he was engaged a contract labourer by the Labour Contractor, who was engaged by the Junior Engineer of the petitioner and payments towards his salary was paid by the petitioner and, therefore, the workman is an employee under the petitioner. It is the further case of the workman that the Standing Orders of the petitioner clearly stipulates that any casual labour, who had worked 240 days in a period of 12 calendar months shall be deemed to be a temporary workman and of the Board and, therefore, the workman having put in the said service, his service from 1980 to 3.2.1998 shall be treated as temporary service, which should be taken for the purpose of calculation of pension.



WEB COPY

4. It is the case of the petitioner that persons, who had completed more than 10 years of service excluding nominal muster roll and temporary casual labourer service, shall have the said period calculated for the purpose of computing pensionary benefits under the regular work establishment, as provided for in Memorandum (P) No.7588/N1/881- (SB) dated 11.7.1998 and as per (Pe) B.P. No.124 (SB) dated 30.12.1992 as well as B.P. Ms. (FB) No.5 (Audit Br.) dated 26.06.1986. However, the workman was selected on the basis of the Justice Khalid Commission and joined as Helper on 3.3.1998 forenoon and the total service rendered by the workman is only 9 years 5 months and 29 days. Therefore, the question of payment of pension does not arise in line with the aforesaid proceedings of the Board.

5. Therefore, upon superannuation, since the claim of the workman for pension was negated. Hence, the workman filed C.P. No.215/2007 claiming arrears of pension for the period from 1980 to 3.2.1998 and C.P. No.254/2013 for the period 1.9.2007 to 30.6.2013 and the Addl. Labour Court, without properly appreciating the materials available on record, had passed the impugned order directing payment of pension to the workman and, accordingly directed



W.P. Nos.8650/20014 – 29174/2016

computation of arrears of pension, to be paid to the workman. Aggrieved by the said orders, the present petitions are filed.

6. Learned counsel appearing for the petitioner submitted that when the issue pertains to disputed questions, adjudication u/s 33-C (2) of the ID Act is impermissible, as no adjudication could be done under Section 33-C (2). Only insofar as admitted facts are concerned, a petition u/s 33-C (2) would be maintainable. In this regard, learned counsel for the petitioner placed reliance upon the decision of the Apex Court in ***Municipal Corporation of Delhi – Vs – Ganesh Razak & Anr. (1995 (1) SCC 235)***, wherein the Supreme Court has held that only with relation to an already adjudicated issue, the Labour Court could exercise its power u/s 33-C (2).

7. It is the further submission of the learned counsel that the basis of regularisation stems from the Justice Khalid Commission report, which recommended the absorption of 18006 persons, who were working as contractor labourers in TNEB and based on the said report, the contract labourers were absorbed on the basis of the order of the Supreme Court. However,



W.P. Nos.8650/20014 – 29174/2016

retrospective regularisation was not granted by the Supreme Court to enable the said workmen to claim that the said period should be reckoned for the purpose of computing all their benefits.

8. It is therefore the submission of the learned counsel that the decision of the Supreme Court cannot be interpreted or interfered with by the Labour Court to suit the workmen, which order is perverse and illegal.

9. It is the further submission of the learned counsel that the decision in ***Suprintending Engineer & Anr – Vs – Pondurai (W.P. (MD) No.785/2015 – Dated 28.10.2015)*** has clearly held that in terms of regulation of the Board, the benefits will flow from the date of appointment/regularization and the workmen cannot seek for reckoning the contract period for the purpose of pensionary benefits.

10. It is the further submission of the learned counsel that the employees of TNEB are entitled only for pension and DCRG and not entitled to provident fund and gratuity while the contract labourers were paid provident fund and



other benefits by the contractor. The workman was paid provident fund by the contractor and for the same period if pension and DCRG is to be paid by the petitioner by reckoning the service of the workman from the date of his contractual employment, it would be a double bonanza for the workman, to which he is not entitled and which would be grossly illegal and impermissible. Accordingly, learned counsel prays for setting aside the impugned orders.

11. Per contra, learned counsel appearing for the workman submitted that though the Justice Khalid Commission had identified the workman as also one entitled for being regularised and the workman was also issued with the order of permanent absorption on 26.2.1998, yet the date for computation of qualifying service as regularised workman was taken erroneously only from 3.3.1998, which left the workman with a shortfall of one day as otherwise, the workman would be entitled to the benefit of G.O. Ms. No.24, Finance (Pension) Department dated 13.01.1986 and the fraction of a year equal to three months and above would have been treated as one year, which would entail the workman as having completed 10 years of qualifying service for the purpose of pension.



WEB COPY

12. It is the further submission of the learned counsel that the Tamil Nadu Pension Rules, 1978 is applicable to the petitioner as well and, therefore, the workman is entitled to pension by rounding off his service irrespective of the fact his temporary service as contract worker is taken into account or not.

13. It is the further submission of the learned counsel that the pension being capable of computation in terms of money, the computation petition u/s 33-C (2) is maintainable and rightly the court below had computed the monetary value of pension and ordered payment of the same, which does not suffer any perversity or irregularity and the same does not warrant any interference at the hands of this Court.

14. Learned counsel appearing for the workman, to substantiate the aforesaid contentions, placed reliance on the following decisions :-

- i) *CBI – Vs – P.R.Rajagopal (1963 (2) LLJ 89);*
- ii) *New Taj Mahal Cafe (Pvt.) Ltd. – Vs – Labour Court, Hubli & Anr.*
- iii) *T.Velraj – Vs – The Superintending Engineer & Ors. (W.P. No.51 of 2003)*



W.P. Nos.8650/20014 – 29174/2016

WEB COPY

- iv) *The Superintending Engineer – Vs – Appellate Authority & Ors. (W.P. No.6633 of 2008);*
- v) *J.Kasithangam – Vs – The Tamil Nadu Electricity Generation & Distribution Corporation Ltd. (W.P. No.23101 of 2012);*
- vi) *Union of India & Ors. – Vs – Rakesh Kumar & Ors. (20187 (1) SCC (L&S) 51);*
- vii) *Netram Sahu – Vs – State of Chhatisgarh & Anr. (2018 (5) SCC 430); and*
- viii) *Prem Singh – Vs – State of UP & Ors. (2019 (10 SCC 516)*

15. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

16. There is no quarrel with the proposition that where the claim is possible for computation in terms of monetary value, a petition could be maintained u/s 33-C (2) of the ID Act. However, it should also equally not be lost sight of that there should be an accrued right, which enures to the workman, which alone would be the basis on which such computation could be made. Therefore, the establishment of relationship between the two entities is *sine qua non* for applicability of Section 33-C (2).



W.P. Nos.8650/20014 – 29174/2016

WEB COPY

17. In the case on hand, there is no quarrel that there exists a relationship between the petitioner and the workman and the claim raised by the workman is possible of computation in monetary terms, which enables the maintenance of the petition u/s 33-C (2) of the ID Act. Therefore, there is no quarrel with regard to computation of monetary value. However, it is to be pointed out that such computation would be only on the basis of undisputed facts and disputed facts cannot be adjudicated by the Labour Court to give any benefit to one or the other party u/s 33-C (2).

18. As aforesaid, the scope of a petition u/s 33-C (2) is that it is limited to the extent of quantifying the monetary value of the services. However, the said quantification could be only on the basis of certain undisputed facts and no adjudication can be embarked upon by the Labour Court. When the period between 1980 and 1998 cannot be reckoned for the purpose of qualifying service and no adjudication could be made thereof by the Labour Court, the adjudication made by the Labour Court by including the said service for the purpose of quantifying the monetary benefit of pension payable is wholly perverse. The



WEB COPY

decision in *Ganesh Razak case (supra)* relied on by the petitioner is squarely applicable to the case on hand, wherein the Apex Court has held thus :-

“12. where the very basis of the claim or the entitlement of the workmen to a certain benefit is disputed, there being, no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding under Section 33- C(2) of the Act. The Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under Section 33-C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognised by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court's power under Section 33-C (2) like that of the Executing Court's power to interpret the decree for the purpose of its execution.”

19. In the case on hand, the workman had been a contract labourer, who was subsequently brought into the regular establishment by regularising his service based on the recommendations of the Justice Khalid Commission. Accordingly, the workman's service was regularized w.e.f. 3.3.98 and the workman joined the services on 3.3.98 and the period prior to the said date, the



workman was under contractual employment. Though the workman contends that the order of absorption is dated 26.2.1998 and, therefore, for all purposes, the regularisation would start from 26.2.1998 and calculation of service from that date, the workman has completed 10 years and would be entitled for pension, however, it is to be pointed out that the joining of the workman in the post would be the determinant date for counting the period of service. The issuance of the order of absorption cannot be the basis to count the period of service for the purpose of computing the service rendered by a workman.

20. In this backdrop, the decision of the Division Bench of this Court in *Pondurai's case (surpra)*, would stand squarely attracted, wherein, in identical circumstances, the Division Bench has held as under :-

“6. At best, the respondent was one among many members of the Society, working on contract basis with the appellants Board, which was abolished by G.O.Ms.No.950, Labour and Employment Department, dated 08.08.1990. Therefore, the Government Order makes it clear that there is demarcation consequent to G.O.Ms.No. 950, Labour and Employment Department, dated 08.08.1990. Prior to that, the respondent and all other members of INDCOSERVE were Contract Labourers and not appointed either substantively or in an officiating or temporary capacity



WEB COPY

of the appellants Board in a qualifying service. On issuance of the said Government Order, 17 pursuant to absorption on 01.05.1999, the respondent became an employee of the appellants Board. If that fact is clear and undisputed, the commencement of qualifying service would be reckoned from 01.05.1999 and not before that. Service as a member of the Society (INDCOSERVE), a contract which came to be abolished, can never be a qualifying service. In such view of the matter, as per Rule 11 of the Tamil Nadu Pension Rules, 1978, the respondent is ineligible for pension unless and until he puts in the qualifying years of service as required under Rule 43(2) of the Tamil Nadu Pension Rules, 1978. G.O.Ms.No.408, Finance (Pension) Department, dated 25.08.2009 or the Board's Proceedings, as has been prescribed earlier would be applicable only in respect of services viz., Nominal Muster Roll or Temporary Casual Labourer in the service of the Board and not for the members of a Society.

7. We find no reason to accept G.O.Ms.No.408, Finance (Pension) Department, dated 25.08.2009 or the Board's Proceedings could be extended to Contract Labourers, unless the Government or the Board specifically takes a conscious decision to extend the benefit to the members of the Society, who had put in long years of service as Contract Labourers and were subsequently, 18 absorbed. We would, however, like to express our concern that the Government and the Board should consider and issue appropriate Government Orders similar to that of G.O.Ms.No.408, Finance (Pension) Department, dated 25.08.2009, to consider the plight of large number of employees, who had put in long years of service for the benefit of the Board even as Contract Labourers through the Society or otherwise.



WEB COPY

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 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."*

21. From the above, it is clear that the workman having joined the service 3.3.98, the commencement of qualifying service could be reckoned only from 3.3.98 and not from the date when the order of appointment was issued.

22. In the above backdrop, the applicability of G.O. Ms. No.24 is pressed into service. The calculation of the length of service for the purpose of pension which is to be reckoned as one half year only if it is above three months and above. In the case on hand, the workman had completed only 9 years 5 months and 29 days, thereby it is falling short by one day. The aforesaid Government



W.P. Nos.8650/20014 – 29174/2016

Order clearly stipulates that service which is three months and above alone shall be treated as completed one half year for the purpose of determining the qualifying service.

23. In the case on hand, the workman had put in only 9 years 5 months and 29 days and, therefore, the aforesaid Government Order, in no way would further the case of the workman. It is also to be borne in mind that the workman was absorbed based on the Justice Khalid Commission recommendation and the date of his absorption would be the date when the workman joined the service which alone would be the date for computing the qualifying service. In the case on hand, the workman had joined the service on 3.3.98 and the period of computation of qualifying service would start only from 3.3.1998 and not at any anterior point of time. That being the case, the appointment of the workman being from 3.3.1998 and regularisation of his services would commence only from 3.3.1998 for all intent and purposes, on the basis of the recommendations of the Justice Khalid Commission and not before that.



WEB COPY

24. The workman having joined the service and his services have been subsequently regularised, albeit from 3.3.1998, and superannuated on 31.08.2007, neither G.O. Ms. No.24 nor the Board Proceedings would have any consequent effect, which would in turn benefit the workman in terms of Rule 11 of the Tamil Nadu Pension Rules, 1978, as the said Rules 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.

25. In the case on hand, as aforesaid, the workman had joined the post on 3.3.1998 and only on and from the said date, the service of the workman could be counted for the purpose of calculating the qualifying service for the purpose of pension. Therefore, the workman having joined the post on 3.3.1998, the petitioner had properly computed the service of the workman and, therefore, the said action cannot be said to be erroneous or arbitrary.

26. It is further to be pointed out that while the Supreme Court had ordered regularisation of the workmen, who were under contractual



employment, on the basis of the Justice Khalid Commission recommendations and there was no direction from the Apex Court that the services of such contractual workmen anterior in point of time to the date of regularisation be counted for all purposes. In effect, their appointment would have retrospectivity has not been spelt out by the Apex Court. Such being the case, the regularisation of the workmen on the basis of the orders of the Apex Court would only be from the date of their appointment and not stretching it to an anterior point of time so as to rope in the service rendered by them in the temporary posts and such an interpretation given by the Tribunal is wholly impermissible.

27. There being no affirmative direction from the Supreme Court with regard to counting of past services for the purpose of entitlement of benefits and regularisation being ordered from the date of appointment of the workmen in the regular establishment in a substantive post, the fixation of the date of joining the post by the workman would alone be the determinant date and the workman having joined on 3.3.1998 calculating the service from the said date cannot be said to be erroneous.



WEB COPY

28. There is no quarrel that the petitioner is also governed by the Tamil Nadu Pension Rules. The workman had put in 9 years 5 months and 29 days service. G.O. Ms. No.24 cannot be pressed into service that any period crossing six months alone could be taken into consideration for the purpose of calculation of the said period as one half year for calculating the qualifying service of the workman. Though very many decisions of the Apex Court have been pressed into service on behalf of the workman in its written submissions, however, it is to be pointed out that in all the said cases, the workmen therein had put in more than six months of service, which, upon applying the relevant Government Orders, had been construed as one half year for the purpose of computation of pension. Therefore, neither G.O. Ms. No.24 nor the Pension Rules would advance the case of the workman.

29. The Labour Court had misdirected itself and had allowed C.P. No.215/2007 on an erroneous appreciation of the materials placed before it and based on erroneous application of law based on which the subsequent C.P. No.254/2013 has come to be allowed. Both the computation petitions have been allowed on a wrong application of the legal position as also provision of law when



W.P. Nos.8650/20014 – 29174/2016

WEB COPY

the workman is not entitled to any benefit of pension. The consequent direction to pay pension to the workman by computing the period of his service, which period itself is under contractual employment and is disputed, the Labour Court *sans* jurisdiction to entertain the computation petitions. Therefore, the orders impugned in the present writ petitions deserve to be set aside.

30. For the reasons aforesaid, both the writ petitions deserve to be allowed and, accordingly, the writ petitions are allowed by setting aside the orders impugned therein. Connected misc. petitions are closed. There shall be no order as to costs.

08.08.2023

Index : Yes / No

GLN

To

The Presiding Officer
Addl. Labour Court
Vellore District, Vellore.



WEB COPY



W.P. Nos.8650/20014 – 29174/2016

M.DHANDAPANI, J.

GLN

**PRE-DELIVERY ORDER IN
W.P. NOS.8650 OF 2014
& 29174 OF 2016**

**Pronounced on
08.08.2023**