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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :20.12.2023

CORAM

THE HONOURABLE MS. JUSTICE R.N.MANJULA

W.P No.18131 of 2021

Xavier C.G. ... Petitioner

/vs/

1.The State of Tamil Nadu
Rep by its Secretary to Government
Human Resources Department,
Fort St George, Chennai- 600 009.

2. Tamil Nadu Road Development Company Limited,
Rep. by its Chairman & Managing Director,
No.171, 2nd Floor, Tamil Nadu Maritime Board Building,
South Kesavaperumal Puram, Greenways Road,
Raja Annamalai Puram,
Chennai- 600 028. ... Respondents

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India for issuance of a WRIT OF MANDAMUS directing the 2nd respondent to extend the benefit of G.O.Ms. No. 29 Personnel and Administrative Reforms (S) Department dated 25.02.2021 to the petitioner and reinstate the petitioner into service of the 2nd respondent Company with effect from 01.05.2021 and allow him to continue in service till the petitioner attains the age of 60 years in the 2nd

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Respondent Company and consequently direct the 2nd respondent to provide all consequential monetary benefits to the Petitioner.

For Petitioner	: Mr.C.Vigneswaran
For Respondents	: Mr.T.Chezhiyan, Additional Govt. Pleader for R1
	: Mr.M.Sivavarthanan for R2

ORDER

The petitioner has filed this Writ Petition seeking a Writ of Mandamus to direct the 2nd respondent to extend the benefit of G.O.Ms. No. 29 Personnel and Administrative Reforms (S) Department dated 25.02.2021 to the petitioner, reinstate him into service of the 2nd respondent's Company with effect from 01.05.2021 and allow him to continue in service until he attains the age of 60 years in the 2nd Respondent Company and consequently direct the 2nd respondent to provide all consequential monetary benefits to the Petitioner.

2.Heard, Mr.C.Vigneswaran, learned counsel for the petitioner and Mr.T.Chezhiyan, learned Additional Government Pleader for the first respondent and Mr.M.Sivavarthanan, learned counsel for the second respondent and also

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perused the materials available on record.

3. The petitioner joined the 2nd respondent company in 1899 as a Secretary, which is a public sector undertaking. Since the Government of Tamil Nadu passed a G.O.Ms.No.51 of 2020 dated 07.05.2020 for increasing the age of superannuation of government servants from 58 to 59 years and thereafter from 59 to 60 years which G.O.Ms.No.29, Personnel and Administrative Reform(s) Department dated 25.02.2021, the petitioner, who was in service as on 07.05.2020, has claimed that the age of superannuation is 60 years and not 58 years. Since the petitioner's services were not extended beyond 58 years as per the above government orders, the petitioner has taken out this writ petition seeking directions.

4. Mr. T. Chezhiyan, learned Additional Government Pleader for the first respondent submitted that the 2nd respondent is neither a registered State Public Sector Undertaking nor a Statutory Body. It is further stated that as per the definition of Section 2(71) of the Companies Act 2013, the 2nd respondent is a public limited company and as per Section 2(45) of the Act, it is not equal to a public sector undertaking as claimed by the petitioner. By so stating, it is claimed

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that G.O.Ms.No.29, Personnel and Administrative Reform (s) Department dated 25.02.2021 and G.O.Ms.No.51 of 2020 dated 07.05.2020 are not applicable to the 2nd respondents company.

5. However, Mr.C.Vigneswaran, learned counsel for the petitioner submitted that in the 2nd respondent's company, the State of Tamil Nadu is a major shareholder through TIDCO, which is a fully owned Government Corporation. So the government is directly or indirectly holding the control of the 2nd respondent's company by holding major shares in it.

6. Mr.M.Sivavarthanan, learned counsel for the second respondent submitted that the 2nd respondent's company is a Public Limited Company incorporated on 28.05.1998. The 2nd respondent Company was initially a 50:50 joint initiative between Tamil Nadu Industrial Development Corporation Ltd (hereinafter referred to as TIDCO) and Infrastructure Leasing and Financial Services Ltd (IL&FS) and thereafter in November 2009, TIDEL Park Ltd acquired the entire equity stake held by IL&FS in TNRDC and thus the 2nd Respondent has become a 50:50 joint venture company of TIDCO and TIDEL Park Ltd. The 2nd Respondent is not an Autonomous Undertaking of the

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Government of Tamil Nadu. It is further submitted that the 2nd Respondent is doing certain projects in the road sector by catalysing private sector resources and investments under Public-Private Partnership (PPP) framework and it is on commercial basis. It is submitted that the Government Orders extending the age of 60 years for the service of its employees, as submitted above, is not applicable to the second respondent.

7. The Government Order in G.O.Ms.No.51 of 2020 dated 07.05.2020 and G.O.Ms.No.29, Personnel and Administrative Reform (s) Department dated 25.02.2021 ensures the extension of the age of retirement to all the employees of Constitutional and Statutory bodies, Public Sector Undertakings including all State Corporations, Local Bodies, Boards, Commissioners, Societies, etc. However it is claimed by the 2nd respondent that the 2nd respondent's company cannot be classified as a Government company in view of the definition of the term Government Company. As per Section 2 (45) of the Companies Act. 2013, a "Government Company" means any company in which not less than fifty one percentage of the paid-up share capital is held by the Central Government, or by any State Government or Governments or partly by the Central Government and partly by one or more State Governments, and includes a company which is

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subsidiary company of such a Government Company. According to the 2nd Respondent, the 2nd respondent's company does not fall under the above category as it does not hold the shares directly in the 2nd Respondent Company exceeding 51% of the Share Capital.

8. The share capital between TIDCO and Tidel Park is 50;50. It is not in dispute that TIDCO is a wholly owned Government of Tamil Nadu Undertaking. The Tidel Park Ltd holds the remaining 50% and the shares of Tidel Park are held by the various companies like TIDCO (24.43%); Electronics Corporation of Tamil Nadu Limited (ELCOT) (4.55%); State Bank of India (11.36%); Indian Bank (11.36%); Indian Overseas Bank(6.82%); Canara Bank (5.68%); Central Bank of India (2.27%); LIC(6.25%); Infrastructure Leasing and Financial Services Ltd (4.55%);Hyundai Engineering & Constructions (9.09%); Larsen & Toubro (9.09%)& ETA Engineering Limited (4.55%).

9. However, the petitioner claims that TIDCO is a Government of Tamil Nadu Undertaking which owns 50% of the shareholdings and Tidel park which comprises of 24.43% of share holdings of TIDCO also holds the remaining 50% in the 2nd respondents company. So TIDCO's share with the 2nd respondent

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company is 50 % direct and another 24.3% through Tidel Park. So total shareholding of TIDCO in the 1st respondent company is 74.43%, which exceeds 51% of the government share in the company. So it cannot be claimed by the 1st respondent that the Government does not hold the direct shares of 51% of the share capital and hence it cannot be classified as the government corporation.

10. In this regard it is relevant to refer to the earlier judgement rendered by the Hon'ble Division Bench of this Court with regard to the 2nd respondent company in a matter involving Right to Information Act in W.A.No.811 of 2008 dated 05.08.2008 reported in ***CDJ 2008 MHC 5983 [Tamil Nadu Road Development Company Limited Vs. Tamil Nadu Information Commission, represented by its Registrar and another].*** In the said judgement it is held that the 2nd respondent company is a public authority within the meaning of 2 (h)(d)(1) of RTI Act and hence it is bound to give information sought under the Right to Information Act. The definition of public authority under section 2 (h) (d) (1) of the RTI Act states that the term '*public authority'* includes any body owned control or substantially financed either directly or indirectly by the government.

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11. However, the learned counsel for the 2nd respondent submitted that the observation that the 2nd respondent is a public authority is only for the limited purpose of RTI Act and that cannot be extended to the applicability of G.O.Ms.No.51 of 2020 dated 07.05.2020 and G.O.Ms.No.29, Personnel and Administrative Reform (s) Department dated 25.02.2021 for the purpose of increasing the retirement age of the employees of the 2nd respondent on par with the government employees. Even if such an argument is accepted to be correct, the 2nd respondent still appears as a government company whose major shares are owned by the government.

12. As stated already 50% of the 2nd respondent's shareholdings are held by TIDCO and remaining 50% are held by Tidel Park which again has 24.43 % for TIDCO. So the government share and control over the affairs of the 2nd respondent company is apparent and hence the 2nd respondent cannot dodge from implementing the G.O.Ms.No.51 of 2020 dated 07.05.2020 and G.O.Ms.No.29, Personnel and Administrative Reform (s) Department dated 25.02.2021 to its regular employees.

13. Though TIDCO owns the major share of the 2nd respondent, just for the

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purpose of camouflaging that the share capital of TIDCO is below 51%, TIDCO's direct shareholding is restricted to 50% and its shareholding through Tidel park is another 24.43%. However, it is the Government which holds the major shareholdings and not the private parties as submitted by the 2nd respondent. Tamil Nadu State Cadre Administration officers and Government Servants are nominated to act as the Chairman / Directors of the Board of the company for the TIDCO and Tidel Park and this is another factor which would show that the government has an influence in the company.

14. If the corporate veil is removed, it can be seen that the government of Tamilnadu not only holds the major share but also capable of controlling the affairs of the company through its bureaucritical assistance. Hence it is right for the petitioner to claim that G.O.Ms. No. 29 Personnel and Administrative Reforms (S) Department dated 25.02.2021 is applicable to the regular employees of the 2nd respondent's company.

15. In the result, this Writ petition is **allowed.** The 2nd respondent is directed to extend the benefit of G.O.Ms. No. 29 Personnel and Administrative Reforms (S) Department dated 25.02.2021 to the petitioner. However since the

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petitioner has crossed the age of 60 years now, the monetary benefit can be extended only for the purpose of fixing the pension by considering his last drawn salary by giving notional impact till his attaining the age of 60 years. No costs.

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Internet : Yes/No
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State of Tamil Nadu Human Resources Department,
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