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W.P.No.124 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No.124 of 2017

&

W.M.P.No.123 of 2017

R.Marudhan

... Petitioner

Vs.

1.The Chairman
TANGEDCO
Anna Salai
Chennai-600 002

2.The Superintending Engineer
Administration and Procurement
Ennore Thermal Power Station
Chennai-600 057

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorarified Mandamus to call for the records of the relating to the impugned order passed by the 2nd respondent dated 02.11.2016 in letter No.182/Me.Pa.Po/Ko(Ma)Nir/Ni.U.2/Ko.Va.2016 to



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quash the same and consequently direct the respondents to sanction the pension benefits to the petitioner taking into account of the entire period of service with the respondents including the period of service as helper from 01.08.1986 to 30.04.1999 along with the regular service with the respondent department.

For Petitioner : Mr.C.Prabakaran

For Respondents : Mr.Haroon
for
M/s. T.S.Gopalan & Co for R1 and 2

ORDER

The Writ Petitioner has approached this Court seeking issuance of a Writ of a Certiorarified Mandamus to call for the records on the file of the 2nd respondent in letter No.182/Me.Pa.Po/Ko(Ma)Nir/Ni.U.2/Ko.Va.2016 dated 02.11.2016 and to quash the same and consequently direct the respondents to sanction the pension benefits to the petitioner taking into account his entire period of service with the respondents including the period of service as helper from 01.08.1986 to 30.04.1999 along with the regular service with the respondent department.



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2. The case of the Writ Petitioner is that he was appointed as a contract worker at Ennore Thermal Power Station in the year 1980. Thereafter, he was appointed as a contract worker in the very same post through INDCOSERVE SOCIETY again as contract labour from 01.08.1986 to 30.04.1999. During the course of employment the Tamilnadu Electricity Board deducted pension and provident fund amongst from his salary and the petitioner was also assigned provident fund account number. The petitioner after long legal battle was absorbed into regular service on 30.10.1999. Thereafter, he worked as probationary employee for a period of nine months and his service was regularized on 14.02.2001 and from that date he was continuing in service till 2021 when he attained the age of superannuation.

3. It is the case of the petitioner that he is entitled to pensionary benefits based on G.O.Ms.No.408, Finance(Pension Department) dated 25.08.2009 and since the same has not been given, he made a representation to the 2nd respondent on 11.03.2016 requesting him to take into account 50% of the service period rendered as contract labour for the period 1986 to 1999



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for the purpose of computing his pensionary benefits.
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4. By the impugned order, the 2nd respondent has rejected the request of the Writ Petitioner and the Writ Petitioner has approached this Court stating that the petitioner cannot be treated as fresh appointee as he initially served as a contract labourer and thereafter his services were regularised way back in 2001.

5. Though no counter affidavit has been filed, counsel for the respondents has made his submissions.

6. Heard Mr.C.Prabakaran, learned counsel appearing for the petitioner and Mr.Haroon for M/s. T.S.Gopalan & Co, learned counsel appearing for the respondents 1 and 2.

7. This Court has taken into account the rival submissions made by the learned counsel on either side. It is the submission of the learned counsel for



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the petitioner that whether he is a contract labourer or not, he should be entitled to benefits of G.O.Ms.No.408 Finance(Pension Department) dated 25.08.2009. He relied on the judgment of the Division Bench of this Court in ***2014 2 CTC 777, Union of India, rep by the Secretary, Atomic Energy Commission, Ministry of Atomic Energy, Trombay and another Vs. K.Punniyakoti and others***. In the said case, the Division Bench of this Court held that right of Government servants to receive pension is a statutory right conferred under the pension rules applicable from the date when the Government servant was appointed either on daily wage/temporary/permanent basis and that permanent absorption having been ordered considering the temporary service rendered earlier cannot be treated as fresh appointment. Relying on the ratio laid down by the Division Bench, learned counsel for the petitioner contended that when this Court has not made any difference between daily wage/temporary labour, his case of contract labour cannot be exempted or treated differently.



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8. Learned counsel for the respondents relies on latest Division Bench of this Court in W.A.(MD)No.785 of 2015 dated 28.10.2015. The Division Bench of this Court in the said judgment has specifically dealt with labour on contract basis and finally found that there is no reason to extend G.O.Ms.No.408, Finance (Pension) Department dated 25.08.2009 to contract labour unless the Government or the Board specifically takes a conscious decision to extend the benefit to them. This decision specifically deals with the issue of person appointed on contract basis that is the case on hand as well. Therefore, this court has no difficulty in applying the ratio laid by the Division Bench of this Court in W.A.(MD)No.785 of 2015 to the facts of the present case. There is no quarrel that the petitioner wants his period of service entered on contract basis to be taken into consideration. Now that the issue is no longer res-integra in view of the ratio laid down in W.A.(MD) No.785 of 2015 which has also been subsequently followed by another learned Single Judge of this Court in W.P.No.10884 of 2015, this Court has no hesitation to hold that the Writ Petitioner's request cannot be entertained.



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9. Writ Petition fails and accordingly dismissed. No costs.

Consequently, connected Writ Miscellaneous Petition is closed.

08.06.2023.

Internet: Yes
Index: Yes/No

kpr
To
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P.B.BALAJI, J.,
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