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Rev.Apln.No.132 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2023

CORAM

THE HON'BLE Mr. JUSTICE R.SURESH KUMAR
AND
THE HON'BLE Mr. JUSTICE G.ARUL MURUGAN

Review Application No.132 of 2017

- 1.The Chairman,
Tamil Nadu Electricity Generation and
Distribution Corporation Limited,
N P K R R Maaligai,
144 Anna Salai, Chennai.
- 2.The Chief Engineer (Personnel)
Tamil Nadu Electricity Generation and
Distribution Corporation Limited,
N P K R R Maaligai,
144 Anna Salai, Chennai.
- 3.The Superintending Engineer,
Tamil Nadu Electricity Generation and
Distribution Corporation Limited,
Tuticorin Thermal Power Station,
Tuticorin.

... Petitioners

Vs.

M.Subramanian

... Respondent

Prayer : Review application filed under Order 47 Rule 1 read with Section 114 of the Code of Civil Procedure, praying to review the order of this Court dated 13.07.2015 in W.A.No.912 of 2014.

For Petitioners : Mr.Anand Gopalan
for M/s.T.S.Gopalan and Co.

For Respondent : Mr.N.Suresh



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ORDER

WEB COPY (Order of the Court was made by R.SURESH KUMAR, J.)

This review application has been filed seeking to review the order passed by the Division Bench dated 13.07.2015 in W.A.No.912 of 2014. In the said judgment, the Division Bench considered the case of the appellants who are the present petitioners i.e. TANGEDCO to challenge the order passed by the writ Court whereby the plea raised on behalf of the respondent/writ petitioner to seek for DCRG i.e. retirement benefits including pension, gratuity, GPF, DCRG etc. was allowed.

2. When that order was questioned before the Division Bench, the Division Bench has taken note of the earlier history of the case atleast where two litigations were already been over. Actually the respondent/writ petitioner was an employee of the appellant TANGEDCO but in this context there had been a dispute, therefore in order to get a permanent status, the respondent/writ petitioner approached the appropriate authority under the Tamil Nadu Industrial Establishment (Conferment of Permanent Status of Workmen) Act, 1981 the said authority passed an order giving such permanent status to the employee/respondent/writ



petitioner by their order dated 02.01.2001 that order was challenged unsuccessfully before the writ Court in W.P.No.11073 of 2002 which was also confirmed by the Division Bench of this Court in W.A.No.4088 of 2004 by order dated 09.09.2005, therefore it has been concluded that the respondent/writ petitioner/employee was a permanent employee of the appellant TANGEDCO from 2001.

3. However, the writ petitioner/employee had approached the writ Court in filing W.P.No.11417 of 2007 seeking for a direction to the appellant TANGEDCO to pay backwages to him from the date of removal i.e., 03.11.1999 upto the date of absorption i.e., 30th November 2005. That benefits sought for by the writ petitioner was rejected through an order passed by the learned Single Judge in the said writ petition W.P.No.11417 of 2007 which was unsuccessfully appealed in W.A.No.856 of 2007 by the employee/writ petitioner/respondent, thereafter he had filed Special Leave (Civil) Nos.19911 to 19912 of 2008 which also was dismissed thereby the issue as to whether the employee/writ petitioner/respondent was entitled to seek for the backwages for the period from 1999 to 2005 was concluded in favour of the employer and against the employee.



4. Because of the backwages which was denied to the employee/writ petitioner for the period from 1999 to 2005 on the ground that, the 1995 termination order has not been set aside and no backwages had been sought for by filing any separate writ petition by the employee, therefore on that ground that, there was no work no pay, the learned Judge denied the said backwages for the said period between 1999 and 2005.

5. However, insofar as the terminal benefits on superannuation of the employee is concerned i.e., pension, gratuity, DCRG etc., in order to get the same, when he made an attempt that was rejected by the TANGEDCO which was under challenge in the present round of litigation in W.P.No.35057 of 2013 which was allowed in favour of the employee/writ petitioner on 11.03.2014, that order was impugned before the Division Bench in W.A.No.912 of 2014, where, the Division Bench by order dated 13.07.2015 which is under review here had dismissed the said writ appeal by making an observation that, indisputably, the writ petitioner was granted permanent status with effect from 02.01.2001. The intervening period, when he was out of job on account of either termination or by any other service disability, cannot take away the right



of the petitioner for entitlement of pensionary benefit, if he is otherwise eligible under the scheme. By making the observation, the Division Bench had directed the appellant TANGEDCO who were the respondents in the writ petition to calculate the retiral benefits under different heads be paid to him, to that extent the observation was made and the writ appeal filed by the appellant TANGEDCO was disposed.

6. Aggrieved over the said order, the present review petition has been filed.

7. Mr.Anand Gopalan, learned counsel appearing for the review petitioner would contend that, the period between 1999 and 2005 after termination of service, the employee did not agitate the same separately to challenge the termination order and in a separate proceedings under the Conferment of Status Act, he got a favourable order which had been confirmed by the Division Bench, therefore in 2005 he was reinstated or his service is restored, therefore between the period 1999 and 2005 he was not working and his termination order also has not been challenged, therefore it was intact till 2005, therefore the said period from 1999 to 2005 cannot be construed as a service period even for the purpose of



Rev.Apln.No.132 of 2017

retiral or pensionary benefits. This would be the principle that could be culled out from the series of orders passed by the writ Court confirmed by the Division Bench as well as the Hon'ble Supreme Court in the SLP in the earlier round of litigation. However, this aspect has not been considered in proper perspective by the Division Bench in the judgment which is under review, therefore the learned counsel seeks indulgence of this Court to review the said order.

8. We have also heard Mr.N.Suresh, learned counsel appearing for the respondent who would submit that, insofar as the service period of the employee is concerned, it was a continuous one atleast from the date when he was given the permanent status in the year 2001 till his superannuation in the year 2013, for the said period whatever be the terminal benefits including the pensionary benefits for which he is entitled to, therefore the same shall be calculated and be paid to him that what exactly has been held by the learned Judge in the writ petition which has been confirmed by the Division Bench by reiterating the said decision, therefore the judgment which is sought to be reviewed need not be interfered with in this way of review application, he contended.



9. We have considered the said submissions made by the learned counsel appearing for both sides and have perused the materials placed before this Court.

10. As has been rightly pointed out by the learned counsel appearing for the respondent/employee, insofar as the service period between 2001 and 2005 is concerned, it is covered by the order passed by the conferment authority, which has been confirmed by this Court upto the Division Bench, only pursuant to which reinstatement has been made in the year 2005. Therefore, for the purpose of taking the continuity of service from 2001, the order of termination made in the year 1999 shall not stand in the way.

11. Moreover, in the earlier round of litigation whether the employee was entitled to get the benefits for the period between 1999 and 2005 alone was the question that was answered by the learned Judge which was confirmed by the Division Bench as well as the Hon'ble Supreme Court, therefore the employee is not entitled to get the backwages for the said period upto 2005. However it does not mean that, that will take away the right of the employee for getting the pensionary



Rev.Apln.No.132 of 2017

benefits by taking the continuity of service for calculating the service including the service between the period from 2001 and 2005. Therefore, the said attempt made by the petitioner herein to seek review of the order, as projected by the learned counsel, is an erroneous approach which cannot be sustained in the eye of law especially on the facts and circumstances of the case.

12. Therefore, we do not find any error apparently on the face of the record in the judgment of the Division Bench dated 13.07.2015. Therefore, it does not warrant any interference by way of review under this petition, hence the present review petition is liable to be rejected, accordingly it is dismissed. However, there shall be no order as to costs.

[R.S.K., J.] [G.A.M., J.]
24.11.2023

Index : Yes/No

Speaking Order : Yes/No

Neutral Citation : Yes/No

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