



W.P.No.28767 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.28767 of 2017

R.Munusamy

...Petitioner

Vs

1. Tamil Nadu Water Supply & Drainage Board,
Rep. by its Chairman & Managing Director,
Chepauk, Chennai – 600 005.

2. The Executive Engineer,
Maintenance Division,
TWAD Board,
Tiruvannamalai.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records from the files of the 2nd respondent pertaining to his impugned letter No.286/Ko.Pension/Para/T.Malai/2017 dated 08.08.2017 and quash the same and consequently direct the respondents to sanction pension to the petitioner with arrears of pension from the date it became due within a time frame.



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For Petitioner : Mr.K.M.Ramesh, Senior Counsel
for Mr.S.Apunu

For Respondents : Ms.S.Shahila Banu

ORDER

Heard Mr.K.M.Ramesh, learned Senior Counsel appearing on behalf of the petitioner and Ms.S.Shahila Banu, learned Standing Counsel for the respondents.

2. On 01.07.1989, the petitioner herein was engaged as a Maintenance Assistant on daily wage basis. He was dis-engaged from service on 25.12.1990 and thereafter, he was re-engaged on 27.06.1995. Once again, on 26.08.1995, his services were dis-engaged. Challenging this action of dis-engagement on 26.08.1995, the petitioner raised an Industrial Dispute in I.D.No.207 of 1996 before the Labour Court, Vellore and by an award dated 24.06.2002, the Labour Court had directed the Management to reinstate the petitioner, together with continuity of service. However, in lieu of back wages, a lump sum amount of Rs.15,000/- was awarded. The award was part of a common award, whereby it is stated that the workmen, who were similarly placed as that



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of the petitioner herein, were extended the benefits of the Old Pension Scheme.

3. Challenging the award of the Labour Court, the Management had preferred a Writ Petition before this Court in W.P.No.46265 of 2022 and by an order dated 19.04.2011, the learned Single Judge had modified the award by treating the compensation of Rs.15,000/- as illegal, in view of the reinstatement. When the petitioner had challenged the same in an intra-court appeal in W.A.No.313 of 2012, the same was allowed on 18.06.2012, by restoring the original award of the Labour Court dated 24.06.2002 in I.D.No.207 of 1996. Effectively, the award for reinstatement with continuity of service was restored. The Management had not preferred any further appeal against the same. Instead, they have passed orders on 12.10.2012, for payment of the lump sum compensation and had also reinstated the petitioner back into service. Accordingly, the petitioner had joined the service on 15.10.2012. On 12.11.2013, the service of the petitioner was regularized by taking into account that the petitioner had joined duty, with effect from 15.10.2012 and since he had completed 480 days as on 12.06.2013, his regularization was given effect



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to from 13.06.2013 onwards, together with declaration of probation. In this background, the petitioner was permitted to retire from service on 30.04.2017. When the petitioner had given a representation dated 15.05.2017 to the respondents, seeking for the benefits of the Old Pension Scheme, his request came to be rejected through the impugned order dated 08.08.2017, stating that since his services were regularized after 01.04.2003, he is entitled only for the benefits under the New Pension Scheme. Challenging the said order, the present Writ Petition has been filed.

4. The learned Senior Counsel appearing on behalf of the petitioner submitted that when the award for reinstatement together with continuity of service was implemented by the Management by reinstating the petitioner into service, his service requires to be taken into account from the date of the original dis-engagement, i.e., from 26.08.1995 and since the Labour Court had awarded continuity of service, the benefits accruing from 26.08.1995 requires to be considered and therefore, he would be entitled for the benefits under the Old Pension Scheme.



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5. Per contra, the learned Standing Counsel appearing for the respondents submitted that the petitioner had joined the service only on 15.10.2012 and on completion of 480 days, his services were regularized with effect from 13.06.2013. Since the regularization date is after the cut-off date of 01.04.2003, he would be entitled only for the New Pension and therefore, there is no infirmity in the impugned order.

6. The entire mode in which the award of the Labour court came to be implemented by the respondents is *ab initio* illegal. When the Labour Court passes an award of reinstatement, together with continuity of service, the only mode in which a workman can be reinstated back into service is from the date on which he was dismissed or otherwise terminated from his services and the service period requires to be reckoned from the date of dismissal for all purposes, in view of the award for continuity of service.

7. In the instant case, the second respondent, while passing the order of regularization dated 12.11.2013, had misconstrued the award of the Labour Court and had calculated the completion of 480 days with



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effect from 15.10.2012 when he had joined the duty. The respondents have totally lost sight of the petitioner's services between 26.08.1995 and 15.10.2012, which was covered under the award for reinstatement and continuity of service. Since the order of regularization fails to take the original date of termination, i.e., 26.08.1995 into consideration, the said order is *ab initio* void. On the other hand, the respondents ought to have calculated the period of 480 days from 26.08.1995 and thereby regularized the services of the petitioner. If that be done, the petitioner is deemed to have been regularized into service prior to 01.04.2003 and thereby, he would be entitled for the benefits under the Old Pension Scheme, under G.O.Ms.No.259, Finance (Pension) Department, dated 06.08.2003.

8. The impugned order has proceeded on the footing that the petitioner had joined duty only on 15.10.2012 and that his services have been regularized with effect from 13.06.2013 and thereby, the respondents have rejected his claim for the benefits under the Old Pension Scheme. In the light of the findings rendered by this Court, the impugned rejection order itself cannot be sustained.



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9. The Hon'ble Division Bench of this Court, in the case of ***The State of Tamil Nadu, Department of Municipal and Water Supply Department and others Vs. R.Kesvan*** passed in ***W.A.(MD) No.1026 of 2015, dated 30.09.2015***, had dealt with the entitlement of an employee under the New Pension Scheme in the following manner:

"10. The pension papers of the respondent were returned on the premise that there is a bar in considering the claim for pension in terms of G.O.No.259, Finance (Pension) Department, dated 06.08.2003 and G.O.No.430, Finance (Pension) Department, dated 06.08.2004. The learned Single Judge, after considering the relevant Government Orders, has clearly held that the Government Orders are in relation to contributory pension scheme, applicable to the newly appointed employees after 01.04.2003. The respondent having been appointed in the year 1985 and regularised on 11.08.2006 w.e.f., 23.06.2006 would not fall within the parameters of newly appointed employees, i.e., after 01.04.2003. The above Government Orders cannot be made applicable to the respondent. As rightly held by the learned Single Judge, the new scheme is applicable only to the employees



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appointed on or after 01.04.2003, the appointment of the respondent is not a new recruitment and it is a case of regularisation, after putting 20 years of service."

10. Though the petitioner herein had not challenged the original order of regularization dated 12.11.2013, insofar as it regularizes the petitioner's services on completion of 480 days from 15.10.2012, this Court is of the view that serious prejudice would be caused to the petitioner, if the regularization order is not interfered with. As stated earlier, the order itself is illegal in the eyes of law and therefore, by applying the correct proposition, the petitioner's regularization ought to have been declared on completion of 480 days from 26.08.1995, together with consequential declaration of probation.

11. In the result, the order of regularization dated 12.11.2013, insofar as it regularizes the petitioner's services on completion of 480 days from 15.10.2012, the date on which he is claimed to have joined duty is concerned, and the impugned order of rejection dated 08.08.2017 are quashed. Consequently there shall be a direction to the respondents to



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pass appropriate orders, sanctioning pension in favour of the petitioner under the Old Pension Scheme, by taking into account that the petitioner had completed 480 days of service from 26.08.1995. Such orders for sanctioning and disbursing the arrears of pension shall be passed, atleast within a period of four weeks from the date of receipt of a copy of this order.

12. Accordingly, the Writ Petition stands allowed. No costs.

01.03.2023

Index:Yes/No

Neutral Citation:Yes/No

Speaking order/Non-speaking order

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To

1.The Chairman & Managing Director,
Tamil Nadu Water Supply & Drainage Board,
Chepauk, Chennai – 600 005.

2.The Executive Engineer,
Maintenance Division,
TWAD Board,
Tiruvannamalai.



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M.S.RAMESH,J.

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