



W.A. (MD) No.251 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 05.07.2023

PRONOUNCED ON : 26 .07.2023

CORAM:

**THE HONOURABLE DR.JUSTICE ANITA SUMANTH
AND
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

W.A(MD).No.251 of 2020
and
CMP(MD).No.1682 of 2020

The Superintending Engineer
Tamil Nadu Generation and Distribution
Corporation Limited
Ramnad Electricity Distribution Circle
Ramnad District

...Appellant

Vs

K.Kanthavel

...Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, to allow the writ appeal and set aside the order dated 21.10.2019 in W.P(MD).No.2660 of 2017 .

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

For Respondent : Mr.K.Kanthavel
Party-in-person



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J U D G M E N T

WEB COPY (Judgment of the Court was made by **R.VIJAYAKUMAR, J.**)

The respondent in the writ petition is the appellant herein challenging the order wherein and whereunder the writ Court had issued a positive direction to take into consideration the services of the writ petitioner between 09.10.1987 to 18.01.2002 for the purpose of reckoning of pension.

Factual Background:

2.The writ petitioner was working as a Selection Grade Assistant in a regular post in Tamil Nadu Magnesium and Marine Chemicals Limited (TMML), Ramanathapuram from 09.10.1987 to 18.01.2002. The said Tamil Nadu Government undertaking went into liquidation and it was wound up on 22.03.2001. The Government of Tamil Nadu passed G.O.Ms.No.59 Industries (MIF-II) Department dated 20.02.1997 for absorbing the employees of TMML in any one of the public sector undertakings to suitable posts as per the eligibility and qualification. Since the request of the petitioner was not considered for absorption, he filed a writ petition in which there was a direction to the appellant herein to absorb the writ petitioner. Since the said order was not



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complied with, the petitioner had filed Contempt Petition(MD).No.227 of 2000 in which an order was passed on 10.11.2000 directing the Electricity Board to create a post and appoint the petitioner with pay protection.

3.The compliance of the said order of this Court, the appellant herein had passed an order on 31.12.2001, provisionally selecting the writ petitioner for absorption and appointment as Assessor. Posting order was issued on 04.01.2002, appointing the writ petitioner as Assessor at Pazhamkottai Section of Sankarankovil Division. The petitioner attained superannuation on 31.05.2016. The petitioner has sent a representation on 15.06.2016 to the appellant herein requesting him to reckon his regular services in TMML, Ramnad, from 19.01.1987 to 18.01.2002 along with his services with Tamil Nadu Electricity Board for calculation of pension.

4.Since his request was not responded, he filed W.P(MD).No.13559 of 2016 in which the orders were passed on 29.07.2016 directing the Electricity Board to consider his request and pass orders within a period of four weeks from the date of receipt of a copy of the order. Since the said order was not complied with, the petitioner had filed Contempt Petition (MD).No.79 of 2017 and thereafter, the appellant herein had passed the order impugned in the writ



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petition on 03.02.2017. Under the said impugned order, the appellant Board had rejected the request of the petitioner for reckoning the petitioner's services in TMML on the ground that he had received all the benefits from the official liquidator towards Provident Fund, Gratuity, Leave Salary and Medical Benefits. As a result, his services in the electricity Board should be treated as a fresh appointment and he cannot seek to count his past services in TMML. This order was challenged in W.P(MD).No.2660 of 2017.

5.The petitioner had contended that he was working in a regular post in Tamil Nadu Government undertaking Board and it was wound up. He had received terminal benefits from the official liquidator. Therefore, he is not seeking for those benefits which he had already received. However, the services rendered by him in TMML should be taken into the consideration for calculation of pension. The petitioner had relied upon his appointment order in the Electricity Board Proceedings No.223 dated 21.11.2009 and the Board Proceedings No.20 dated 31.07.2008 to contend that once an employee is absorbed in a Government undertaking without any break in services, his past services should be counted for calculation of pension. However, the respondent board had contended that he was retrenched from TMML and he had received all terminal benefits from the official liquidator and therefore, he is not entitled to seek for calculation of those services for pension benefits.



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6.The writ Court after considering the contention of either side, had arrived at a finding that the petitioner is eligible to calculate his past services in TMML towards his pensionary benefits and set aside the order passed by the board and allowed the writ petition. Challenging the same, the present Writ Appeal has been filed by the Electricity Board.

Contentions of the parties:

7.The learned counsel appearing for the appellant had relied upon the proceedings of the Official Liquidator, High Court, Madras dated 06.12.2010 and contended that the writ petitioner had received a sum of Rs.2,16,189/- in C.P.No.55 of 1998 towards his terminal benefits due to his retrenchment from TMML. Therefore, the writ petitioner is not entitled to count his past services in TMML. The petitioner has suppressed these facts in the writ petition and therefore, he is not entitled to any relief in the present writ petition.

8.Per contra, the respondent who appears party-in-person had contended that in the Board Proceedings No.223 dated 21.11.2009 which relates to revision of wages with effect from 01.12.2007, there is a clear reference that as far as the employees absorbed by the board from other organizations on permanent basis are concerned, their regular services in the parent organization



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shall be taken into account for allowing service weightage after fixation of pay in the revised scale. He further relied upon the order of Division Bench in WA(MD).No.1914 of 2011 dated 24.04.2012 wherein the Division Bench was pleased to confirm the order of the writ Court which had directed that pay protection should be given to the writ petitioner in the revised scale of pay for the post of Assistant. Therefore, according to the respondent, when pay protection was granted to him counting his services in TMML, naturally the said period of services should also be counted for pensionary benefits.

9.The respondent had further contended that by the Board Proceedings No.19 dated 20.07.2006, 154 employees of Thirumayam Rural Electric Co-operative Society were absorbed into the Electricity Board. Another proceedings No.20 was passed on 31.07.2008 to the effect that the services rendered by those employees in the Co-operative Society shall be reckoned for pension. The petitioner being similarly placed, his services in TMML should also be reckoned for the purpose of pension. Hence, he prayed for sustaining the order passed by the writ Court.

10.We have considered the submissions made on either side and perused the material records.



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Discussion:

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11.The petitioner was working as an Assistant in Tamil Nadu Magnesium and Marine Chemicals Limited (TMML) from 09.10.1987 and the Government of Tamil Nadu undertaking underwent liquidation and it was wound up. The Tamil Nadu Government had passed G.O.Ms.No.59 Industries (MIF-II) Department dated 20.02.1997 agreeing to absorb the employees of the liquidated company in any one of the public sector undertakings to a suitable post subject to eligibility and qualification. The petitioner has been appointed in the appellant Electricity Board vide order dated 31.12.2001 and posting order was issued to him by proceedings dated 04.01.2002.

12.A perusal of the appointment order and the posting order clearly reveal that he has been absorbed and appointed as an Assessor in the time of scale of pay and it is not a fresh appointment.

13.In the writ petition in Paragraph No.10 of the affidavit, the petitioner had specifically pointed out that he is not seeking Salary, Provident Fund, Leave Salary etc.for the period for which he had worked in TMML. His only request was to count his services in TMML for the purpose of pension. Therefore, the reference by the appellant counsel to the order of the Official



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Liquidator dated 06.12.2010 under which a sum of Rs.2,16,189/- was disbursed to the writ petitioner towards his terminal benefits for being retrenched in TMML will not have any relevance for the purpose of considering his request for calculation of pension.

14.The petitioner had joined services of the appellant Electricity Board on 31.12.2001. The board has reached a memorandum of settlement on 15.10.2005 under Section 12(3) of the Industrial Disputes Act with its workmen for revision of scale of pay with effect from 01.12.2002. Clause 4(3)(b) of the said Board Proceedings is extracted as follows:

“4(3)(b).In the case of employees absorbed by the Board from the Government Departments or other organizations on permanent basis, the regular service in their parent department or organization as the case may be, shall be taken into account for allowing service weightage after fixation of pay in the revised scale if that service count for increment in their parent department or organization as the case may be”.

15.The Board entered into another memorandum of settlement under Section 12(3) of the Industrial Disputes Act on 18.11.2009 for revision of scale of pay with effect from 01.09.2009. TANGEDCO Proceedings No.3, dated 11.01.2014, Clause 4(3)(b) is extracted as follows:

“4(3)(b).In the case of employees absorbed by the Board from the



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Government Departments or other organizations on permanent basis, the regular service in their parent department or organization as the case may be, shall be taken into account for allowing service weightage after fixation of pay in the revised pay if the that service counts for increment in their parent department or organization as the case may be”

16.The petitioner had filed W.P(MD).No.5402 of 2004 to quash the order dated 11.02.2002 and to direct the Electricity Board to give pay protection to the petitioner for the post of Assistant in the revised pay scale. The said writ petition was partly allowed directing the electricity board to give pay protection to the respondent. This order was challenged by the electricity board in W.A.No.1914 of 2011. The Division Bench was pleased to dismiss the writ petition and the operative portion of the said order in Paragraph Nos. 5 and 6 is extracted as follows:

“5.There is no dispute that the respondent was appointed as Assessor notwithstanding his claim that he should have been given appointment as Assistant. The appellant appointed the respondent as Assessor during the pendency of the contempt petition initiated by him. The appellant filed an appeal in L.P.A.No.49 of 2002 challenging the direction to appoint the respondent as Assistant in Tamil Nadu Electricity Board. Before the Division Bench, appellant submitted that the respondent was given pay protection and he was drawing in excess of his actual pay which he was drawing in TMML. Therefore, it was a clear admission on the part



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of the appellant with regard to the pay protection given to the respondent.

The learned single Judge having found that the respondent was given pay protection earlier, directed the Tamil Nadu Electricity Board to fix the basic pay in the pay scale of Assessor from the date of his appointment. The said order was passed in the light of the earlier order passed by the appellant and the pay protection given to the respondent.

6. Since the Board has given pay protection earlier, they cannot now contend that the learned Single Judge was not justified in directing them to revise the basic pay in the pay scale of Assessor.”

17. The Board proceedings cited supra and the order of the Division Bench of this Court in W.A.No.1914 of 2011 will clearly disclose that the writ petitioner has been granted pay protection as Assessor in Tamil Nadu Electricity Board considering his past services in TMML. The Board proceedings cited supra further point out that the regularize services rendered by absorbed employees in their parent department shall be taken into account for allowing service weightage. That apart the appointment order of the Electricity Board itself points out that he has been absorbed and appointed. There is no dispute that the writ petitioner was in regular service as an Assistant in TMML. Hence, it is clear that the services of the writ petitioner in TMML covering the period between 09.10.1987 to 18.01.2002 should be taken into consideration for calculating his pensionary benefits. However, the said period shall not be taken



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into consideration for any other monetary benefits in view of the fact that the writ petitioner has already received those benefits from the official liquidator on 06.12.2010.

Conclusion:

18. In view of the above said deliberations, we do not find that there is any error or infirmity in the order of the writ Court in directing the Electricity Board to reckon the past services of the writ petitioner in TMML for calculating the pensionary benefits. There are no merits and the Writ Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[A.S.M.J.] & [R.V.J.]
26 .07.2023

NCC : yes/no
Index :yes/no
Internet :yes/no
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DR.ANITA SUMANTH, J.
AND
R.VIJAYAKUMAR, J.

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Pre-delivery Judgment made in
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