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W.P.No.5629/2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2024

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THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. No.5629 of 2020

K.Panneerselvam

...

Petitioner

/vs/

1. The Chairman,
TANGEDCO, Chennai – 2.

2. The Secretary to Government,
Industries Department,
Fort St. George,
Chennai – 9.

3. The Director of Industries & Commerce,
Industrial Estate, Guindy,
Chennai – 32.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of mandamus to direct the respondents particularly 2nd and 3rd respondents to count the petitioner's past service from 01.06.1967 to 02.06.1986 rendered in the Industries Department condoning the break from 09.05.1985 to 02.06.1986 for counting that service in the Industries



W.P.No.5629/2020

Department for pension with the present pensionable service in the TNEB

to get a longer period for taking into account for sanction of full pension.

For Petitioner ... Mr.A.L.Namasivayam

For Respondents ... Mr.K.Rajkumar
Standing Counsel for R1

Mr.T.Chezhiyan
Additional Govt. Pleader for R2

ORDER

Heard Mr.A.L.Namasivarayam, the learned counsel for the petitioner, Mr.K.Rajkumar, the learned Standing Counsel for the first respondent and Mr.T.Chezhiyan, the learned Additional Government Pleader for the second respondent.

2. The petitioner has filed this writ petition directing the respondents 2 and 3 to count his past services from 01.06.1967 to 02.06.1986 rendered in the Industries Department by condoning the break from 09.05.1985 to 02.06.1986 for computing the qualifying service for pensionary benefits and for sanctioning full pension.



W.P.No.5629/2020

WEB COPY

3. The petitioner worked as a Supernumerary Inspector of Assessor in Tamil Nadu Electricity Board and retired on superannuation on 31.08.2003. His services for terminal benefits for pension was calculated from 03.06.1986 to 31.08.2003. Earlier the petitioner was working as a “Glass Blower” in the Government Scientific Glass Training Centre on daily wages from 01.06.1967 to 08.05.1985. Later he was promoted as “Skilled Worker Grade II”. The Government of Tamil Nadu has taken a policy decision to close the production units and hence the petitioner and similar others were retrenched. The retrenchment compensation was very meagre and they were not initially provided with any alternative appointment.

4. Certain skilled and semi-skilled workers of the Directors of Industries and Commerce Department were provided with alternative job as per G.O.Ms.348 Industries Department dated 09.04.1985. However their services have been regularized in pursuant to the direction given by this Court in W.P.No.7303/1983 dated 28.12.1999 and in this regard a



W.P.No.5629/2020

Government Order has been issued in G.O.(4D) No.11, EI(2) Industries Department dated 16.03.2001 by creating Supernumerary Post with effect from the date of their joining into service. The petitioner is one of the beneficiaries who got alternative appointment as per the decision of the Government in G.O.No.348 Industries Department dated 09.04.1985. The petitioner has been absorbed in Tamil Nadu Electricity Board and he was appointed as Supernumerary Assessor on 03.06.1986. Later the petitioner got retired from TNEB on 31.08.2003.

5. Mr.A.L.Namasivayam, the learned counsel for the petitioner, submitted that the period of service rendered by the petitioner in the Industries Department should also be included for the purpose of calculating his pension. Attention of this Court was drawn to the Memorandum No.22478/Pen/77-1 of Finance (Pension) Department dated 16.02.1977 wherein it is stated that all provincialised service of work charged personnel will be counted for pension under the Madras Liberalised Pension Rules. It is further submitted that as per G.O.408 (Finance) Pension Department, dated 25.08.2009, 50% of the services



W.P.No.5629/2020

prior to the regularization can be taken for counting the qualifying service for pension and hence 50% of the petitioner's services rendered from 01.06.1967 to 02.06.1986 can be taken into account. Further, the petitioner's services from the date of regularization i.e. 01.07.1977 to the date of retrenchment 08.05.1985 which was regularized by the Industries Department should also been included along with the period of services rendered from 03.06.1986 to 31.08.2003 with the TNEB.

6. It is already stated that the break in services from 09.05.1985 to 02.06.1986 was also relaxed and the services of the petitioner will be taken as continuous service from 01.01.1977 to 31.08.2003. The case of a similarly placed person who had also sought similar relief to count his past services rendered in the Industries Department for the purpose of pension has also been considered favourably by this Court vide order dated 24.09.2021 made in W.P.No.20949/2008. In the said order it is held as under:

“ 12.Para-4 is specifically relied upon by Mr.Selvaraj to point out that the recruitment of the petitioner in the TNEB was only as a fresh appointment and his claim for taking into account his



previous service in the Industries Department is not liable to be accepted, in light of the plain language of the G.O.

13. There had been various representations prior to passing of the impugned G.O., when the petitioner has been in communication with the Department regarding both the status of the employment as well as the benefits that he laid claim to. It is while those representations were pending consideration that the impugned G.O. has come to be passed disbanding the Unit.

14. The petitioner was thereafter absorbed in the TNEB and has been appointed as a Supernumerary Inspector of Assessment. He retired on attaining superannuation on 31.05.2008. He claims that in computing his retirement benefits, the period of service with the Industries Department must be taken into account, which claim has come to be rejected by R4 vide impugned order dated 19.07.2008 based solely upon paragraph-4 of the impugned Government Order.

15. At the outset, it is relevant to state that the petitioner's case is not an isolated one and there have been other instances where, initially, the claim of other identically placed employees had come to be rejected by their respective departments.

16. The petitioner has also placed on record, instances of employees transferred from the Department of Geology in whose



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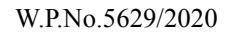
W.P.No.5629/2020

cases the said Department had itself recommended that their services be taken into consideration while computing the terminal benefits due.

17.Mr.Selvaraj would argue that merely because the Department of Geology had adopted a generous view does not mean that the Board must as well. However, Mr.P.Subramanian, appearing for the Board, fairly does not put forth any objection to accepting the petitioner's claim, subject to the necessary service particulars being produced by R3."

7. However Mr.K.Rajkumar, the learned Standing Counsel for the first respondent, submitted that as per Rule 21 of the Tamil Nadu Pension Rules, all those persons who have been dismissed / removed from the Government service will not get the benefit of their past services to be counted for pension. It is further submitted that the petitioner has not challenged the earlier order dated 29.10.2013 which rejected the petitioner's request to conclude his past services.

8. The Right to pension is a continuing benefit and hence the failure on the part of the petitioner to challenge the rejection order cannot be a bar



9. As per the clarificatory note issued by the Government in its
 Memorandum No.22478/Pension/77-1 dated 16.02.1977, it has been made
 clear that in all provincialised service of work, the work charge personnel
 shall be counted for pension under the Madras Liberalised Pension Rules.
 Therefore, I feel the respondents shall consider the petitioner's past service
 rendered in Industries Department shall also be computed along with his
 service rendered with TNEB by giving a condonation for the break in
 service between the period from 09.05.1985 to 02.06.1986 and pass
 necessary orders for issuance of enhanced pension to the petitioner.



W.P.No.5629/2020

10. In view of the above stated reasons, this Writ Petition is allowed and the respondents are directed to consider the petitioner's past service rendered in Industries Department along with his services rendered with TNEB by condoning the break in service between the period from 09.05.1985 to 02.06.1986 and pass revised orders for issuance of enhanced pension to the petitioner, within a period of four weeks in the light of the above direction. No costs.

13.02.2024

Index: Yes / No
Speaking order / Non-speaking order
Neutral Citation : Yes / No
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To:

1. The Chairman,
TANGEDCO, Chennai – 2.
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WEB COPY



W.P.No.5629/2020

R.N.MANJULA ,J.

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