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W.P.No.6103 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2024

CORAM

THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

W.P.No.6103 of 2020

and

W.M.P.No.7176 of 2020

V.Ramaraj

...Petitioner

Vs.

1. The Chairman,
Tamil Nadu Generation and Distribution
Corporation Limited,
800, Anna Salai
Chennai - 600 002.
2. The Chief Engineer (Personnel),
Tamil Nadu Generation And Distribution
Corporation Limited,
800, Anna Salai,
Chennai - 600 002.
3. The Chief Engineer / O and M,
Tamil Nadu Generation And Distribution
Corporation Limited,
CEDC South I,
K.K.Nagar
Chennai - 600 078.
4. The Superintending Engineer,
Tamil Nadu Generation And Distribution
Corporation Limited,
CEDC South I,
K.K.Nagar
Chennai - 600 078.



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5. The Executive Engineer,
Tamil Nadu Generation And Distribution
Corporation Limited,
CEDC South I,
K.K.Nagar
Chennai - 600 078.

6. The Superintending Engineer,
Udumalpet Electricity Distribution Circle,
Udumalaipet,
Tiruppur District.

...Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the orders issued vide Ku.No.Se.Po/E and P/Guindy/Ni.Pi/U3/Ko.Thai/2018, dated 15.03.2018 issued by the 5th respondent and Ka.No.14177/Ni A/NiPi/Vu 1/Court Case 2019, dated 28.08.2019 issued by the 4th respondent and quash the same and to direct the respondents 1 to 4 to sanction pension under the Old Pension Scheme and other attended monetary benefits to the petitioner for the post of Inspector of Assessment under the Old Pension Scheme.

For Petitioner : Mr.S.S.Jothimani

For Respondents : Mr.David Sundar Singh
Standing Counsel

ORDER

The instant Writ Petition has been filed challenging the impugned order dated 28.08.2019 in and by which the request of the petitioner to sanction pension under the old pension scheme was rejected.

2.The learned counsel for the petitioner would submit that the petitioner



joined in the respondents/Corporation by way of a compassionate appointment.

While retiring, he was officiating as the Inspector of Assessment in the office of the Assistant Engineer, and attained superannuation on 31.03.2018. It is the submission of the petitioner that his father P.Vaiyapuri, who was working as an Assistant in the office of the Superintending Engineer, died in harness on 28.12.1998. Hence, the petitioner submitted an application for appointment on compassionate ground on 10.09.1989. It is the further contention of the petitioner that since the respondents delayed the appointment the same necessitated him to prefer W.P.No.11614 of 2000 before this Court, and vide its order dated 07.01.2003, there was a direction to the respondents to consider the representation submitted by the petitioner.

3.Based upon such submission, vide order dated 28.02.2003, the petitioner was informed that he has been recommended for the post of Assessor / Trainee, and advised the petitioner to await for the order of appointment. Even inspite of such letter, the respondents did not issue an appointment order and finally, an appointment order was issued on 12.05.2003 and he was allotted to the Udumalpet Circle. It is the contention of the petitioner that on joining the respondent's Corporation, he was also assigned GPF Number. Therefore, he is entitled for the old pension, whereas the respondents have erroneously rejected the same and hence, prayed to interfere with the order of rejection.



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4. In support of his contention, the learned counsel relied upon the Judgements of this Court in (i) **Smt.Urmila Ashok Kamble @ Smt.Mandabal Gundaji Khamkar v. State of Maharashtra through the Secretary, School Education Department, Mantralaya, Mumbai – 400 032** reported in **2021 SCC Online Bom 3607**, (ii) **Hitesh Kumar and others v. State of Haryana and others** reported in **2018 SCC Online P&H 1344** and (iii) **B.Vallipavai v. The State of Tamil Nadu** reported in **2023 SCC Online Mad 5035**.

5. *Per contra*, the learned counsel for the respondents would vehemently contend that the delay in appointing the petitioner was not wanton as a suit filed by one Padma was pending there. It is the further contention of the learned counsel for the respondents that vide Board proceedings No.264, dated 03.12.2003, and Board proceedings No.6, dated 31.01.2005, the petitioner would only come under the contributory pension scheme, and not under the old pension scheme. Therefore, the learned counsel for the respondents would submit that the order of rejection is well merited and there are no grounds to interfere in the order of rejection.

6. I have given my anxious consideration to either side submissions.



7.The main contention of the learned counsel for the petitioner is that, had the respondents considered the petitioner's representation at the earliest point of time, there would have been a possibility for the petitioner's appointment prior to 01.04.2003. Whereas only because of the deliberate delay, the appointment letter was issued belatedly, and therefore, there was no fault on the part of the petitioner and the petitioner's case has to be considered for the old pension scheme. In this regard, this Court would like to refer the communications between the petitioner and the respondents. Since 1996 till 2003 there are so many communications between the petitioner and the respondents in respect of compassionate appointment.

8.As rightly contended by the learned counsel for the petitioner, in the interregnum, the petitioner also filed a Writ Petition in W.P.No.11614 of 2000 directing the respondents/ Corporation to consider his request for compassionate appointment within a time bound manner. It appeared that only after the order of this Court, the respondent communicated a letter dated 28.02.2003 that the petitioner was recommended for compassionate appointment. Accordingly, the respondents had taken a conscious decision to appoint the petitioner as early as on 28.02.2003. Even after taking such conscious decision, that too after so much of struggle for almost more than ten years, still the respondent appears to be lethargic and had taken another two



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months time to issue the final appointment letter on 04.05.2003.

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9.It is pertinent to mention here that in the meanwhile, from 01.04.2003 onwards, the old pension scheme was abolished and new contributory pension scheme was introduced. According to the respondents, since the petitioner was appointed subsequent to the implementation of old pension scheme, he is only entitled for the contributory pension scheme. As rightly contended by the learned counsel for the petitioner, had the respondents have diligently acted on the representation of the petitioner for compassionate appointment, there would not have been such a long delay for the appointment of the petitioner.

10.In the case in hand, the respondents have taken conscious decision to appoint the petitioner on compassionate ground even in the month of February. If that being the case, the delay in issuance of appointment order cannot be put against the petitioner to avoid old pension scheme. As a matter of fact, the respondents have subscribed the petitioner only in GPF Scheme and not CPS. This is also a factor in favour of the petitioner to have the old pension scheme. Therefore, this Court is of the firm view that there is a merit in favour of the petitioner.

11.In this regard, the learned counsel has relied upon the order of the



learned Single Judge in a batch of **W.P.No.8584 of 2021, etc., dated 10.02.2003**, in the case of **S.Sudhakar and others v. Government of Tamil Nadu rep. By its Secretary to Government, Finance (Pension) Department, Fort St. George, Chennai**, in respect of a Police Constable. The relevant paragraphs are paragraphs 2.2, 5 and 6 and the same read as follows:

“2.2.It is stated by the petitioners that the recruitment process immediately commenced and the selection for the post of Police Constable (Grade-II) was done in the following manner:

25.05.2002	Notification was published for 3500 posts
05.03.2003	Notification was published for 4931 posts
14.05.2003	Physical Entrance Test was conducted
10.06.2003	Written Examination was conducted
15.08.2003	Results for written examination was published
26.08.2003	Medical Test was conducted
12.11.2003	Appointment order was issued

.....

5.The learned Senior Counsel appearing on behalf of the petitioners submitted that for the purpose of determining the cut-off date fixed under G.O.No.259, dated 06.08.2003, the relevant fact is only the date on which the vacancies were notified and applications were called for and not when the actual appointment order was issued. The learned Senior Counsel submitted that the appointment order is only the culmination of a selection process and if the appointment process had commenced prior to 01.04.2003, the candidates selected must automatically be held to be entitled for the benefits of the old Pension Scheme. The learned Senior Counsel to substantiate his submissions, relied upon the Judgment of the Delhi High Court in WP(C) 8208 etc., of 2020, dt.15.01.2021. The relevant portions relied upon in the judgement are extracted hereunder:



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8.The issue in the present batch of matters is no longer res integra. Consequently, the request for additional time to file counter-affidavit is declined.

9.In the case of certain constables of the BSF, this Court by its judgment dated 12th February, 2019 in Tanaka Ram (supra) allowed the prayer of those Petitioners and permitted them to avail of the benefit of the Old Pension Scheme. It was held that the option to continue the Old Pension Scheme should be extended to all those who had been selected in the examination conducted in 2003, but were issued call letters only in January or February, 2004. It is also pertinent to mention that the Respondents aggrieved by the said judgment filed an SLP bearing No. 25228/2019 before the Apex Court. The said SLP has been dismissed by the Supreme Court vide order dated 02nd September, 2019.

10.This Court in Shyam Kumar Choudhary and Ors. vs. Union of India being W.P.(C) No.1358 of 2017 allowed similar petitions vide judgment dated 09th April, 2019 against which the Respondents had again filed SLP bearing no. 31539/2019 which was again dismissed on 27 th September, 2019. The Respondents thereafter chose to file a review petition bearing No.2188/2020 before the Apex Court in the said matter and the said Review petition was also dismissed on merits vide order dated 24th November, 2020.

11.Following the judgment of Shyam Kumar Choudhary (supra), the learned predecessor Division Bench in Niraj Kumar Singh & Ors. vs. Union of India & Ors.,W.P.(C) No.13129/2019 granted similar benefit to 17 petitioners who had applied to the post of Sub-Inspector in Central Police Organisations pursuant to an advertisement dated 21 st June, 2003 even when the written examination and physical efficiency test were held in November, 2003, medical examination was held in January-February, 2004 and final result was declared in May, 2004. The said 17 petitioners were issued offer of appointment on 02nd June, 2005 and on accepting the same, the appointment letter was issued on 14th July, 2005 for joining the Sashastra Seema Bal.



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12. Another Coordinate Bench vide judgment dated 06th November, 2020 in W.P.(C) No. 6548 of 2020 as well 6989/2020 was pleased to allow the said petitions for grant of Old Pension Scheme by following the judgment in Shyam Kumar Choudhary (supra).

13. Having regard to the fact that in the present batch of cases also the advertisement/notification was issued in September, 2003 and June, 2003 i.e. prior to coming into force of the present contributory pension scheme on 22nd December, 2003, this Court is of the view that petitioners cannot be deprived of the benefit of the Old Pension Scheme.

6. The learned Senior Counsel also relied upon the judgement of the Apex Court in P. Ranjitharaj .v. State of Tamil Nadu and Others reported in (2022) SCC Online SC 508 and placed reliance upon paragraphs 12 and 13, which are extracted hereunder:

12. In the given circumstances, when those who are lower in order of merit to the appellants were appointed by an order dated 24th September, 2002, the appellants have no right of say in the matter of appointment and no justification has been tendered by the State respondent as to why their names were withheld for two/three years, when their names were cleared by the Commission on 3rd September, 2002 and sent to the State Government and finally appointments were made of the appellants on 23rd August, 2005 and 23rd April, 2004 respectively and the delay indeed in making appointments in the case of the present appellants in no manner could be attributable to them.

13. In the given circumstances, when all other candidates who had participated along with the appellants pursuant to advertisement dated 9th November, 2001, on the recommendations made by the Commission were appointed on 24th September, 2002 including those who are lower in the order of merit, there appears no reason for withholding the names of the present appellants and merely because they were appointed at a later point of time, would not deprive them from claiming to become a member of Tamil



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Nadu Pension Rules, 1978, which is applicable to the employees who were appointed on or before 1st April, 2003.”

12.Through a Government Order, an amendment was brought in, in Tamil Nadu Pension Rules, by issuing a Notification, whereby a proviso was added to Rule 2 in Chapter I, as follows:

“Provided that these rules shall not apply to Government servants appointed on or after the 1st April 2003, to services and posts in connection with the affairs of the State which are borne on pensionable establishments, whether temporary or permanent.”

In furtherance thereof, G.O.No.430, dated 06.08.2004, was issued and it was provided as follows:

“Heads of the Departments/Heads of Offices should new employees who have already joined the Government Service after 31.03.2003 within a month from the date of this G.O. As and when new employees join in future, they should be admitted to this scheme compulsorily by the Heads of the Department/Heads of offices by promptly applying for allotment of the Index No. to the Accountant General within a month from the date of joining of the new employees.”

13.Therefore, by virtue of the above G.O., if really, the petitioner was considered to be appointed in a new pension scheme, he would have been admitted in the Contributory pension scheme. Whereas in the case in hand, the petitioner was admitted in the General Provident Fund. This is also a factor in



favour of the petitioner. In the unreported case, the learned Single Judge, after taking into consideration of G.O.Ms.No.259, dated 06.08.2003 and G.O.Ms.No.430, dated 06.08.2004 and also taking into consideration of the submissions of the Counsels therein, has ultimately held that the delay on the part of the Appointing Authority cannot be a reason to reject or to admit the petitioner in the old pension scheme. The relevant paragraph is extracted here under:

“16. In this case, the process of selection started with the issuance of Notification dated 25.05.2002, which is nearly 11 months before the new Pension Scheme was brought into force through G.O.No.259, dated 06.08.2003. This Government Order fixed the cut-off date as 01.04.2003. If the selection process of the petitioners had been completed with the very same speed with which it was done for the women Constables, the petitioners would have had the benefit of the old Pension Scheme. However, there was a delay in completing the selection process and it is nobody's case that the delay is attributable to the petitioners. Hence, even though the appointment order was issued to the petitioners during November 2003, that will not in any way deprive the petitioners the benefit of the old Pension Scheme since the process of selection had commenced through Notification dt.25.05.2002. This Court is in complete agreement with the judgment of the Delhi High Court that has been extracted supra. Those judgments were also confirmed by the Apex Court. The reasoning that has been given in the above judgments perfectly falls in line with regard to interpreting a beneficial Scheme. In view of the same, this Court comes to the conclusion that the petitioners cannot be deprived of the benefit of the old Pension Scheme.”

14. In the instant case, the petitioner comes in the equal footing. Insofar

as the petitioner is concerned, he has been awaiting for compassionate



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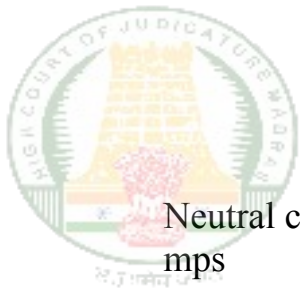
appointment since 1998 and that the respondents took a policy decision to appoint the petitioner on compassionate ground on 28.02.2003 itself. In spite of the fact that there was a struggle for more than ten years to get compassionate appointment, and the decision taken by the respondents to appoint him in the post as early as in the month of February, the subsequent delay in issuing the appointment letter in the month of May, would in no way deprive the petitioner from getting the benefit of the old pension scheme. It is pertinent to mention here that the conduct of the respondents would also indicate that they have considered the petitioner for the old pension scheme, but later on it appears that, only as an after thought, they rejected the claim of the petitioner for the old pension scheme. Therefore, this Court finds merit in this Writ Petition.

In the result, this Writ Petition is allowed, directing the respondents to pay pension to the petitioner under the Old Pension Scheme forthwith, preferably within a period of three months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed. No costs.

25.10.2024

Index :Yes/No
Speaking order :Yes/No

<https://www.mhc.tn.gov.in/judis>



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Neutral citation : Yes/No
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To

1. The Chairman,
Tamil Nadu Generation and Distribution
Corporation Limited,
800, Anna Salai
Chennai - 600 002.
2. The Chief Engineer (Personnel),
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C. KUMARAPPAN, J.

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and
W.M.P.No.7176 of 2020

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