



WEB COPY



W.A. No.2438 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 09.09.2024

DELIVERED ON: 04.10.2024

CORAM:

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

and

THE HON'BLE MR.JUSTICE P.B.BALAJI

W.A.No.2438 of 2024

S.Anbzhagan

.. Appellant/Petitioner

Vs

1.The Chief Engineer,
The Tamil Nadu Generation and
Distribution Corporation,
NPKRR Maligai, 8th Floor, 800, Anna Salai,
Chennai 600 002.

3.The Superintendent Engineer (Admin -II),
Madurai Distribution Circle,
The Tamil Nadu Generation and
Distribution Corporation,
K.Pudur, Madurai -7.

..Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent to set aside the of the learned Judge dated 03.01.2024 passed in W.P. No.35305 of 2023.



W.A. No.2438 of 2024

For Appellant : Mrs.S.Meenakshi

For Respondents : Mr.Anand Gopalan
Standing Counsel
for R1 & R2

J U D G M E N T

(Judgment of the Court was made by MR.JUSTICE P.B.BALAJI, J.)

The unsuccessful Writ Petitioner in W.P. No.35305 of 2023 is the appellant before us.

2. We have heard Mrs.S.Meenakshi, learned counsel for the Appellant and Mr.Anand Gopalan, learned Standing Counsel for the respondents

3. The case of the Writ Petitioner is that he was appointed by the respondents/Department on contractual basis in the year 1993. Despite being eligible for regularisation much earlier i.e., in the year 2001, the petitioner was regularly appointed to the post of Helper only in the year



2005. The petitioner was consequently placed under the New Pension Scheme. After his retirement, he has been requesting the respondents to count his contract service also to bring him under the old pension scheme.

4. The stand of the respondents is that the petitioner was only working on contract basis and he was not properly appointed to a regular vacancy until 11.08.2005. Considering the said date of his regular appointment, the petitioner was not entitled to the Old Pension Scheme. The respondent also relied on G.O.Ms.No.408 Finance (Pension) Department, dated 25.08.2009, Board proceedings No.31 dated 08.09.2011 and Rule 11 of the Tamil Nadu Pension Rules, 1978 to fortify his contentions that the commencement of qualifying service of a Government Servant would be the date on which he takes charge of the post to which, he is first appointed, either substantively or atleast in a temporary capacity. Therefore, the respondents sought for dismissal of the Writ Petition.

5. The learned Single Judge accepting the contentions of the learned counsel for the respondents found that the petitioner having been appointed



only on 11.08.2005, was not entitled to include his contract labour period of service for the purposes of getting the benefits of the Old Pension Scheme.

6. The learned counsel for the appellant Mrs.S.Meenakshi would place strong reliance on the decision of Hon'ble Supreme Court in the case of *State of Himachala Pradesh and Another Vs. Sheela Devi*, reported in (2023) SCC Online SC 1279, where the Hon'ble Supreme Court dealt with the issue of counting of temporary or contract service of employees who were regularised after 2004, for the purposes of pension. At the outset, we do not deem it fit to refer to this decision which dealt with CCS (Pension) Rules, 1997 and especially where the regulations of the State of Himachala Pradesh recognised contractual employment. However, in the present case, the respondents/Department have Rules framed to govern these specific issues and therefore, the ratio laid down by the Hon'ble Supreme Court in *Sheela Devi's* case (referred herein supra) cannot be applied to the facts of the present case.



7. When the respondents Rules do not permit counting of service rendered by an employee on contract basis, the appellant can only be considered in accordance with the date of his regular appointment which is admittedly on 11.08.2005, on which date, the Old Pension Scheme cannot be made applicable to the appellant.

8. It is for the respondent Department to take any decision to extend the benefits of the Old Pension Scheme to contract labourers who were not regularised on the relevant date and no right is bestowed on the petitioner to compel the respondent to extend the Old Pension Scheme to the petitioner.

9. The Full Bench of this Court, in the case of *Government of Tamil Nadu, Represented by the Secretary to Government, Public Works Department Vs. R.Kaliyamoorthi*, reported in 2019 (6) CTC 705 also categorically laid down the legal position that persons regularised after 01.04.2003 would be entitled to Contributory Pension Scheme and further that they would not be entitled to the Old Pension Scheme.



W.A. No.2438 of 2024

10. We do not find any justifiable grounds to interfere with the reasoned order of the Writ Court. Accordingly, the Writ Appeal is dismissed. No costs.

(D.K.K.J.) (P.B.B.J.)

04.10.2024

Internet: Yes/No

Index : Yes/No

Speaking Order/Non Speaking Order
rkp

To

- 1.The Chief Engineer,
The Tamil Nadu Generation and
Distribution Corporation, NPKRR Maligai,
8th Floor, 800, Anna Salai, Chennai 600 002.
- 2.The Superintendent Engineer (Admin -II),
Madurai Distribution Circle,
The Tamil Nadu Generation and
Distribution Corporation, K.Pudur, Madurai -7.



WEB COPY



W.A. No.2438 of 2024

D. KRISHNAKUMAR. J.,
and
P.B.BALAJI, J.

rkp

Pre-delivery Judgment in
W.A.No.2438 of 2024

04.10.2024