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W.P.No.16766 of 2020
& W.M.P.No.20777 of 2020



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.16766 of 2020
& W.M.P.No.20777 of 2020

I.Ganesan,
Accounts Supervisor (Retired),
Revenue Division,
Virudhunagar Electricity Distribution Circle,
Sivakasi. ...

Petitioner

versus

1.The Chairman cum Managing Director,
Tamil Nadu Generation and
Distribution Corporation Ltd.
No.144, Anna Salai, Chennai - 2.

2.The Chief Engineer (Personnel),
Tamil Nadu Generation and
Distribution Corporation Ltd.
No.144, Anna Salai, Chennai - 2.

3.The Superintending Engineer,
Tamil Nadu Generation and
Distribution Corporation Ltd.
Sivakasi.

4.The Executive Engineer / Distribution,
Tamil Nadu Generation and Distribution Corporation Ltd.
Sivakasi. ...

Respondents



Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the entire records connected with impugned order passed by the 4th respondent vide Let.No.002/02/Ni.Pa/21/2020, dated 18.02.2020, and quash the same and direct the respondents to count the past service of the petitioner rendered in the office of the District Registrar (Audit), Virudhunagar as Typist from 06.01.1990 to 21.01.1991, and from 21.11.1991 to 01.07.1994, in the office of District Registrar (Dairying), Virudhunagar, for the purpose of pensionary benefits.

For Petitioner : Mr.S.N.Ravichandran

For Respondents : Mr.K.Rajkumar,
Standing Counsel
for TANGEDCO

ORDER

This Writ Petition has been filed to quash the impugned order passed by the 4th respondent dated 18.02.2020 and also direct the respondents to count the past services of the petitioner rendered in the office of the District Registrar (Audit), Virudhunagar as Typist from 06.01.1990 to 21.01.1991 and in the office of the District Registrar (Dairying), Virudhunagar as Typist from 21.11.1991 to 01.07.1994, for the purpose of pensionary benefits.



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2. Heard Mr.S.N.Ravichandran, learned counsel for the petitioner, Mr.K.Rajkumar, learned Standing Counsel for the respondents and perused the materials available on record.

3. The petitioner was temporarily appointed as Typist in the office of the District Registrar (Audit), Virudhunagar, from 06.01.1990 and ousted from service on 21.01.1991. Later, the petitioner was temporarily appointed as Typist in the District Registrar (Dairying), Virudhunagar from 21.11.1991 and ousted from service on 01.07.1994. Thereafter, he was appointed as Typist in the respondents' Board from 19.09.1995 and was superannuated as Accounts Supervisor on 30.06.2016. Now the petitioner's claim is that, his past services which he had rendered between 06.01.1990 to 21.01.1991 and 21.11.1991 to 01.07.1994 on temporary basis should also be included for the purpose of calculating pension.

4. Mr.S.N.Ravichandran, learned counsel for the petitioner submitted that in similar such cases, earlier orders have been passed to include the past services of the employees to calculate the pensionary benefits. Attention of this Court was drawn to the Government Letter dated



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06.06.2014 issued to the Secretary, Tamil Nadu Electricity Board to consider the past services of an individual for the purpose of calculating the pensionary benefits and the Board has also passed an order to that effect.

5. Mr.K.Rajkumar, learned Standing Counsel for the respondents submitted that the earlier orders have been passed only consequent to the orders given by the Government; so far as the Pension Rules of the Tamil Nadu Electricity Board is concerned, the past services rendered by the petitioner in some other Departments cannot be counted as continuous services; in some of the cases cited by the petitioner, the individuals working in the Government were later absorbed by the Government Department itself and hence their past services had been calculated for the purpose of pension; in the case on hand, the petitioner had joined service in the Electricity Board which is a different establishment; in fact the petitioner's past temporary services were also terminated and there is no continuation and hence his past services cannot be calculated for the purpose of pension.



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6. Since there are breaks in between the past services of the petitioner, the same cannot be counted as qualified service for the purpose of pension. As per the Rule 21 of the Tamil Nadu Pension Rules, the past temporary services of the petitioner prior to termination will be fortified and hence the claim of the petitioner has been rightly rejected by the respondents. Mr.K.Rajkumar, learned Standing Counsel for the respondents relied on the following judgments in support of his submissions:-

- i. *Director General, CSIR Vs. Dr.K.Narayanaswami (1995) 3 SCC 124*
- ii. *State of Karnatana Vs. G.Halappa (2002) 4 SCC 662*
- iii. *Visitor, Amu Vs. K.S.Misra (2007) 8 SCC 593*
- iv. *Justice P.Venugopal Vs. Union of India (2003) 7 SCC 726*
- v. *Chaman Lal Vs. State of Punjab (2014) 15 SCC 715*

7. Mr.S.N.Ravichandran, learned counsel for the petitioner attracted the attention of this Court to the earlier orders issued for counting the past temporary services of the employees for the purpose of pension by names *Nesamani* and *Nagarajan*. In fact, the respondents' Board has sought a clarification from the Government as to the technicality of the matter and in response to that, the Government has clarified by stating that for the



purpose of pensionary benefits, the past temporary services of the employees can be included.

8. Mr.S.N.Ravichandran, learned counsel for the petitioner cited the decision of this Court rendered in *W.P.No.24266 of 2018 (Selvaraj Vs. The Chairman cum Managing Director, TANGEDCO, Chennai)* and canvassed the point that the equal protection and equal treatment should be ensured to all persons belonging to equal status and it is the guarantee provided by the State under Article 14 of the Constitution of India.

9. However, Mr.K.Rajkumar, learned Standing Counsel for the respondents tried to distinguish the case of this petitioner from the cases of *Nesamani* and *Nagarajan* on facts, by stating that in respect of those persons, the Government has issued an order and the respondents' Board had followed the same.

10. So far as this petitioner is concerned, he was not removed or dismissed from service. He was appointed on Rule 10(a)(i) basis and was ousted for a few times during his previous temporary appointments and hence his entitlement in respect of the past services cannot be denied.



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11. The whole contention of Mr.K.Rajkumar, learned Standing Counsel for the respondents is that, even if the Rules are wrongly applied for an individual, it cannot be treated as a precedent for applying the same to the other cases. So far as *Nesamani* and *Nagarajan* are concerned, it appears that they had obtained leave long before the financial year and that cannot be claimed as the continuous service of the petitioner with the respondents' Board.

12. The petitioner has been ousted from service under Rule 10(a)(i) of the Tamil Nadu State and Subordinate Service Rules, it only because of the non-availability of vacancy. Similarly placed persons have been given with the benefit of counting their services rendered with the 2nd respondent. In case the 2nd respondent has any doubt as to the date of implementation of the pension, it could have got resolved on the basis of the earlier orders.

13. Since the petitioner was not dismissed or removed from service because of any of his misconduct and the continuity of service, but the break was only in view of the non-availability of the vacancy in the respondents'



Board, it cannot be simply stated that the petitioner was dismissed or removed from service and that it should be construed as something challenged before the Court of law. Even though the petitioner belongs to different Department, the records would show that similarly placed persons have been given with the benefit which is now claimed by the petitioner. Since the judgments cited by Mr.K.Rajkumar, learned Standing Counsel for the respondents are not applicable to the case of the petitioner, it is not fair on the part of the respondents' Board to deny the relief claimed by the petitioner.

In view of the above discussions, this Writ Petition is **allowed** and respondents' Board shall either include the past services of the petitioner for the purpose of pensionary benefits or get a clarification in this regard from the Government, as it has already been sought in a similar fashion, within a period of six (6) weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

31.01.2024

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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