



W.P.No.27020 of 2021, etc batch

THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 31.01.2024

Pronounced on : 01.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.27020, 27040, 27038, 27035, 27032 of 2021, 14354 of 2022,
27028 of 2021, 14358, 23703, 23706, 23710, 23711, 23723, 23727,
23729, 23746, 23749, 26282, 26293, 26285, 26290, 26199, 26207,
26210, 26213, 31076, 31080, 31094, 31097, 32900, 32902,
32905, 32907, 750, 753, 755, 759, 774, 1539, 1542, 1546, 1548,
3421, 3425, 3429, 3431, 3434, 3731, 3735, 3737, 3738, 3740, 3745,
8047, 8051, 8054, 8058, 12914, 12916, 12917, 14378, 14516,
14830, 14880, 14884, 15327, 15348 & 21137 of 2022 and
WMP.Nos.28463, 28493, 28490, 28486, 28483 of 2021, 13562 of 2022,
28480 of 2021, 834, 838, 841, 850, 864, 1667, 1668, 1669, 1670, 3530,
3535, 3542, 3545, 3550, 3881, 3883, 3885, 3886, 3887, 3891, 8020,
8022, 8025, 8028, 12412, 12414, 12417 of 2022

WP.No.27020 of 2021

K.Natarajan

... Petitioner

Vs.

- 1.Tamilnadu Generation and Distribution Corporation Limited,
Rep.by its Chairman cum Managing Director,
No.144, Anna Salai, Chennai 600 002
- 2.The Chief Engineer(Personnel),
Tamilnadu Generation and Distribution Corporation Limited,
No.144, Anna Salai, Chennai 600 002
- 3.Superintending Engineer,
Tamilnadu Generation and Distribution Corporation,
Tiruvannamalai Electricity Distribution Circle,



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Vengikkal,
Tiruvannamalai

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the concerned records from the 3rd respondent, quash the order of the 3rd respondent bearing Letter No. 000946 - 11 / SE / ADO / ADM - 2 / A.2 / 2020 dated 13.02.2020 as illegal, arbitrary and contrary of law and consequently direct the respondents to take into account of the 50 percent of the service rendered by the petitioner as temporary casual labourer / nominal muster roll for the purpose of calculating pension and on that basis pay pension.

WP.Nos.27020, 27040, 27038, 27035, 27032 of 2021, 14354 of 2022, 27028 of 2021, 14358, 23703, 23706, 23710, 23711, 23723, 23727, 23729, 23746, 23749, 26282, 26293, 26285, 26290, 26199, 26207, 26210, 26213, 31076, 31080, 31094, 31097, 32900, 32902, 32905, 32907, 750, 753, 755, 759, 774, 1539, 1542, 1546, 1548, 3421, 3425, 3429, 3431, 3434, 3731, 3735, 3737, 3738, 3740, 3745, 8047, 8051, 8054, 8058, 12914, 12916, 12917, 14378, 14516, 14830, 14880, 14884, 15327 & 15348 of 2022

For Petitioner : Mr.Balan Haridas



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For Respondents : Mr.Anand Gopalan
for M/s.Agam Legal

WP.No.21137 of 2022

For Petitioner : Mr.K.Selvaraj

For Respondents : Mr.Anand Gopalan
for M/s.Agam Legal

COMMON ORDER

Writ petitions have been filed challenging the order passed by the third respondent thereby rejected the representations submitted by the petitioners seeking to take into account of their 50% of services rendered by them as Temporary Casual Labourer / Nominal Muster Roll for the purpose of calculating pension and other benefits. Some of the writ petitions have been filed for declaration declaring the action of the respondents as illegal in not taking into account, the 50% of their services rendered as TCL/NMR for the purpose of calculating their pension.

2. All the petitioners are challenging the same rejection order and as such this Court is inclined to pass a common order in all the writ petitions. That apart, the issues in all the writ petitions are one and the same.



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3. The petitioners were working as Contract Labourers in the year 1970's and 1980's under the Contract Act enacted by the Tamilnadu Electricity Board. However, the petitioners are claiming that they were engaged by the Tamilnadu Electricity Board directly as Temporary Casual Labourer / Nominal Muster Roll (hereinafter called as TCL/NMR). They were engaged for the work of digging pits, laying pole, giving connections, fixing new meters, etc. There have been demands for absorption of employees working as TCL/NMR. The request went up to the Hon'ble Supreme Court of India. After considering the issue involved in the request made by the employees, the Hon'ble Supreme Court of India formed a One Man Committee under the Chairmanship of the Hon'ble Mr. Justice V.Khalid. The One Man Committee enquired the issues thoroughly and recommended to absorb TCL/NMR's as Helper into service in Tamilnadu Electricity Board by relaxing their qualification by considering their experience by number of years. Accordingly, they were absorbed as Helper. Thereafter, due to their attainment of age of superannuation, they got retired from their respective services.



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Considering the service rendered as TCL/NMR, the Government passed order in GO.Ms.No.408 dated 25.08.2009 ordering to take 50% of the services rendered prior to absorption for the purpose of pension. Accordingly, the respondents Corporation also adopted and issued Board proceedings in BP.No.31 dated 08.09.2011 and it was decided to take into account, half of the services rendered by the TCL/NMR for pensionary benefits along with regular service. Therefore, the petitioners also made representation to consider their services rendered as TCL/NMR for their pensionary benefits. However, it was not considered and as such, some of the petitioners approached this Court in a batch of writ petitions and this Court directed the respondents to consider the request made by the petitioners. However, the representations submitted by the petitioners were rejected by the respondents.

4. The learned counsel for the petitioners submitted that the petitioners had been continuously working for Tamilnadu Electricity Board. Though the petitioners were working under Contractors, they had



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worked for the respondents. Therefore, 50% of their services also to be taken into account for calculating pensionary benefits and their claim cannot be said as belated one and hit by delay and laches. Immediately after board proceedings, the petitioners submitted their respective representations. In fact, those representations were not considered and as such, they were constrained to approach this Court. Only after direction issued by this Court, now the claim made by the petitioners have been rejected. When the similarly placed persons were benefited by the board proceedings in BP No.31 dated 08.11.2011 and as such the petitioners are also entitled for the same relief. The claim of pensionary benefits is a continuous cause of action and as such, it cannot be said as belated one. As per the recommendations made by One Man Committee, the petitioners were absorbed as Helper in the services of the Tamilnadu Electricity Board in the year 1990's. In fact, at the time of absorption, the petitioners' qualification, experience, age and other relevant records were duly verified. Therefore, it cannot be said that the relevant records of their employment are not available and as such, they are not entitled for any pensionary benefits for the service rendered by them as contract



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labourers. In fact, the services rendered by them prior to the absorption and after the absorption is one and the same. Therefore, the services rendered by the petitioners prior to their absorption cannot be wiped out by saying that the board proceedings is not applicable to the contract labourers. He further submitted that one of the co-employee who retired from the Office of the Superintending Engineer, Vellore Electricity Distribution Circle, Vellore, was granted pension order dated 24.06.2014 in the light of the BP.No.31 dated 08.11.2011. Therefore, the similar benefit cannot be denied to the petitioners who are also identically placed in the same position.

4.1 All the petitioners were engaged by the Tamilnadu Electricity Board and they were paid by their respective Assistant Engineer / Junior Engineer. Therefore, they were working only as TCL. Hence, board proceedings in BP.No.31 dated 08.11.2011 is very much applicable to the petitioners.

4.2 He relied upon the Commissioner's report of the Hon'ble Mr.Justice V.Khalid dated 11.02.1991. Before the Commission, the Electricity Board had taken specific stand that the Labourers engaged by



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contractors are not entitled for absorption in the regular service of the Electricity Board as Helpers in relaxation of qualification of National Trade Certificate / National Apprentice Certificate. Accordingly, the Commission framed issues. The Commission answered that raw hands with technical qualification will be superior to persons with long periods of practical experience. It is a matter of common knowledge that practical experience is an excellent substitute for technical qualification in many cases in handling the work like that of the Electricity Board. Accordingly, the qualification was relaxed considering their experience for absorption to the post of Helper. Further held that in recommendation of the services rendered by the contract workers for the benefit of the board, the Board could have evolved suitable proposals to recruit contract workers who are otherwise qualified whenever regular vacancies arise in the Board. Insofar as the contract labourers are concerned, every worker against whom a plea that he is a contract labourer is put forward, has to be treated as the worker of the principal employer unless two conditions are satisfied i.e. (i) that the principal employer has secured a certificate of registration for the relevant period and (ii) it had employed contract labour through a



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licenced contractor. If either of the two conditions is missing, then the contract labour employed through the contractor shall be treated as worker of the principal employer. Therefore, the respondents ought to have considered the petitioners as their workers since there were no certificate of registration for the relevant period and they were not employed under the licenced contractor.

4.3 In support of his contention, the learned counsel for the petitioners also relied upon the judgment of the Hon'ble Supreme Court of India in the case of *Prem Singh Vs. State of Uttar Pradesh and Others* reported in **(2019) 10 SCC 516**, there is a provision to count service spent on work-charged contingencies or non-pensionable service, in case, a person has rendered such service in a given between period of two temporary appointments in the pensionable establishment or has rendered such service in the interregnum two periods of temporary and permanent employment. The work-charged service can be counted as qualifying service for pension in the aforesaid exigencies.



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4.4 He also relied upon the judgment of the Full Bench of this Court rendered in W.A.Nos.158 of 2016, etc batch dated 03.12.2019, wherein it is held that in case, a Government employee/servant had also rendered service in non-provincialised service or on consolidated pay or on honorarium or daily wage basis and if such services were regularised before 01.04.2003, half of such service rendered shall be counted for the purpose of conferment of pensionary benefits.

4.5 In respect of continuous cause of action is concerned, he relied upon the judgment of the Hon'ble Supreme Court of India in the case of *Union of India Vs. Tarsem Singh* reported in **(2008) 8 SCC 648**, wherein it is held that where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury.

5. Per contra, the respondents filed counter and the learned



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counsel appearing for the respondents submitted that all the petitioners were employed as Contract Labourers. Therefore, they are not entitled for any claim. Even assuming that they are TCL/ NMR, it is a disputed question of fact and it cannot be gone into by way of writ petition under Article 226 of the Constitution of India. They were engaged only as Contract Labourer prior to their absorption into service of the Tamilnadu Electricity Board and only based on the One Man Committee recommendation, they were absorbed into service of the Tamilnadu Electricity Board. As per their service records, it is clearly mentioned that they rendered service as Contract Labourer before their absorption. Therefore, their pensionary benefits were rightly calculated from the date of their absorption into service of the respondents. Even assuming that they are entitled for benefit under the above said Government order and the subsequent board proceedings, they made claim after lapse of eight years. Further, the petitioners were not direct employees of the Tamilnadu Electricity Board and hence, the board proceedings No.31 dated 08.09.2011 would not be applicable to the facts of the petitioners. That apart, the Hon'ble Division Bench of this Court categorically held that



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benefits under GO.Ms.No.408 Finance (Pension) Department dated 25.08.2009 or the board proceedings No.31 dated 08.09.2011 could be extended to Contract Labourers, unless the Government or the Board specifically takes a conscious decision to extend the benefit to the members of the Society, who had put in long years of service as Contract Labourers and were subsequently absorbed.

6. Heard the learned counsel appearing on either side.

7. On perusal of records, revealed that on 01.07.1957, Madras State Electricity Board was formed under the Electricity Supply Act to take over the operations of the Electricity Department of the then Government of Madras. Before the formation of the Board, the Electricity Department of the Government of Madras was having employees only in the staff category and technical category like Engineers and Technicians. As far as unskilled manual work was concerned, the Madras State Electricity Board was engaging only persons on NMR or as TCL. Upon formation of the Board, Service Regulations in exercise of powers



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conferred under Section 79 of the Electricity Supply Act, 1948, Regulation 92 codified that appointment to the Distribution Systems and General Circles of categories specified in Annexure-1 and the same shall be made in the manner prescribed in the Regulations. The Board in its initial years met its manpower requirement for doing unskilled manual work by engaging TCL or NMR for whom the Board used to maintain a muster roll and pay them daily wages directly.

8. In the year 1972, there was a bipartite settlement made with Tamil Nadu Electricity Workers' Federation. In this settlement, it was agreed that the TCL workmen who had completed four years of service as on 31.12.1972 in the Distribution Systems and Generation Circles shall, according to their seniority, be absorbed in the Regular Work Establishment Category in the respective Systems or Circles, as the case may be as Helper with effect from 01.01.1973 by relaxing the qualifications prescribed in the TNEB Service Regulations. If the total number of TCL workmen to be absorbed as Helper was in excess of the number of posts for which there were existing vacancies, then



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Supernumerary Posts of Helpers shall be created to absorb such excess number of TCL Workmen. As and when additional posts of Helpers are sanctioned, the number of supernumerary posts of Helpers shall be reduced correspondingly. Again a representation was made that TCL Workmen, who have completed 4 years of service as on 31.09.1972 in the Distribution Systems and Generation Circles, should also be absorbed in the Regular Work Establishment or Temporary Work Establishment as the case may be with effect from 01.01.1973. This demand was also accepted by issuing BP No.34 dated 04.01.1973. The Chief Engineer (General) forwarded a proposal for absorption of TCL who have completed 4 years of service as on 31.12.1973 in the Regular Work Establishment.

9. On 29.04.1974. BP.No.617 was issued directing TCL's who have completed 4 years of service as on 31.12.1973 be absorbed as Helper in the Regular Work Establishment in the respective Systems / Circles with effect from 01.05.1974. By BP.No.1887 dated 22.11.1976, orders were issued for absorption of TCL workmen who have completed



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4 years of service as on 31.12.1975 with effect from 01.01.1977. On 18.02.1977, there was a settlement between TNEB and Workers Union that TCL Workmen who have completed 4 years of service as on 31.12.1975 should also be absorbed with effect from 01.04.1977. Accordingly, BP.No.1887 dated 22.11.1976 was issued. Further, pursuant to BP.No.512 dated 30.04.1977, TCL Workmen who had completed 4 years of service as on 01.04.1977 were also absorbed. Still there were TCL workmen to be absorbed, as they had not completed 4 years of service. There was a further absorption of TCL Workmen who had completed three years of service as on 01.10.1977. The last batch of 2600 TCL Workmen were absorbed pursuant to BP.No.512 dated 30.04.1977. Between 1972 and 1978, approximately 4500 persons working as TCL were absorbed by TNEB. After October 1978, no person was appointed or engaged as TCL.

10. After 1978, in order to meet any contingent manpower requirement which arose consequent to the launching of an electrification drive throughout the State, Contractors were engaged. They signed



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agreements which were called as K2 / Chit Agreements for executing these works. The contractors were paid the amounts payable in terms of the K2/Chit agreement. They in turn would pay the persons employed by them. The persons employed by them by usage were termed as contract labourers. After 01.10.1978, no persons were directly engaged for doing unskilled manual work in the Distribution Systems and Generation Circles. In 1984, pursuant to a settlement with the recognized Unions, TNEB committed to fill 700 posts of Helper by direct recruitment from candidates possessing the prescribed qualification. By Board proceeding No.38 dated 23.05.1986, the service regulations were amended, which prescribed qualification of National Trade Certificate and National Apprenticeship Certificate. The prescription of new qualification for the post of Helper was challenged by the Unions and Associations on behalf of the contract labourers, who were carrying out field work after 1978 onwards. This issue went up to the Hon'ble Supreme Court. By order dated 10.04.1990, the Supreme Court directed appointment of a one man Commission headed by a retired Judge of Hon'ble Supreme Court of India i.e. Mr. Justice Khalid to recommend the criteria to be applied for



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recruitment to the post of Helper.

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11. Various trade Unions got themselves impleaded and submitted list of contract workmen who should be considered for absorption. On 11.02.1991, Mr.Justice Khalid submitted the Commission's report recommending absorption of 18006 contract labourers as Helper in a phased manner. The report was accepted by the Hon'ble Supreme Court and they were absorbed in a phased manner till March 1998. The persons identified by Mr.Justice Khalid were all working as contract labourers. Even after absorption of the 18006 contract labourers identified by Mr.Justice Khalid Commission, the Board voluntarily decided not to engage contract labourer in its Generation Circles. Accordingly, Board Proceedings were passed and more than 10,000 contract labourers were absorbed into the services of the Board. These persons were also absorbed only prospectively. On 10.08.2007, the Board entered into a settlement under Section 12(3) of the Industrial Disputes Act with the Unions for absorption of 21,000 contract labourers. These contract labourers number around 21,000 persons were absorbed



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in a phased manner from 2005 to 2012 in terms of the settlement. In respect of these persons also, the absorption was a prospective date.

12. The Board issued B.P.No.9 dated 09.01.2008 with regard to absorption of the left-over contract labourers, that is those not eligible for absorption in terms of the settlement but were being continued to be engaged in the service of the Board. In terms of these Board Proceedings, more than 4000 persons have been absorbed. All around 35,000 persons who were alleged to be working as contract labour has been absorbed into the services of Board between 1999 and 2013 as narrated above. The service rendered by them as contract labour has not been reckoned for any purposes till date. In fact, Industrial Disputes were raised to reckon the service rendered by the contract labourers who had been absorbed in the year 1999 in the Generation circles. The same has been rejected by the Industrial Tribunal and awards have been passed. Similarly, in the settlement dated 10.08.2007 entered under Section 12(3) of the Industrial Disputes Act 1947, the Union have explicitly agreed that the period spent as contract labour would not be reckoned for any purpose.



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13. The Government of Tamil Nadu issued G.O.Ms.No.408 dated 25.08.2009, stating that 50% of the service rendered by employees NMR/TCL'S prior to absorption in Government service should be reckoned for pension purposes. In GO.Ms.408 Finance (Pension Department) dated 25.08.2009, the Government of Tamil Nadu ordered that half of the service rendered by the Government Servants in temporary service, viz., non-professionalized service on or after 01.01.1961 and absorbed in regular service before 01.04.2003 shall be counted for pensionary benefits along with regular service. On behalf of the employees of TNEB, a demand was made that the service rendered by persons as NMR/TCL should also be taken into account as pensionable service. Acceding to the said BP.No.31 was issued on 08.03.2011, providing that half of the service rendered by the employee of TANGEDCO, prior to absorption, either as Nominal Muster Roll or Temporary Casual Labour would be counted for pensionary benefits. This Board Proceeding was issued to cover persons who had been directly engaged by the board and hence pertained only to persons who



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had worked as TCL or NMR. The objective of GO.No.408 and BP.No.31 is only to provide benefits to persons who were in direct employment but whose services were irregular. The fundamental premise of the scheme was existence of a master and servant relationship. However, as it was irregular, 50% of the same was to be counted and the remaining was being considered. It was a benevolent gesture and the same cannot be cited by the petitioner who are not covered by the Government or Board proceedings.

14. The claim of the Petitioners is belated and is hit by delay and latches. The Petitioners would be entitled to benefits only from the date of actual absorption into the services of the Board and that they had no statutory rights to claim any benefits for the period prior to their actual absorption into the services of the Board. It is only in these circumstances that, despite the petitioners having been absorbed many years ago, he did not raise any dispute or make a claim for reckoning a part of the period he had worked as Contract Labourer for pensionary benefits or any other purpose. Though the Board Proceeding No.31 was passed as early as on



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08.03.2011, there was no claim of the Petitioners within a reasonable period of time. There has been a substantial delay in raising a claim for benefits in terms of B.P.No.31 dated 08.03.2011. In fact, the Petitioners were well aware that the benefits of B.P.No.31 were not available to them and it is only in these circumstances, they had not claimed the benefits as per Board proceedings No.31 dated 08.03.2011.

15. The benefits of BP No.31 would be available only to the NMR's and TCL's who actually received wages directly from the Board and whose engagement details were available with the Board. Persons like Petitioners who worked as contract labourers through third party contractors, were neither paid wages directly by the respondents nor were their work supervised by the respondents. There were no records with regard to the number of days actually worked by the Petitioners. In such circumstances, they cannot have claim in terms of the Board Proceedings No.31 dated 08.11.2007. Therefore, the claim of the petitioners cannot be equated with TCL's who were worked directly with the Board. There was no relationship of master and servant between the petitioners and



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respondents in any manner subsisted before actual absorption and hence on that ground as well, the petitioners cannot claim the benefit of BP No.31. The benefit of BP.No.31 is available only to those who were in direct employment and received wages from the Board directly. NMR/TCL when they were engaged before 1978, they were engaged directly by TNEB. Hence, records were available for the days they worked. Whereas no such records are available with regard to Contract Labourers like the Petitioners. The payments were made to the concerned contractors who had entered into K2/Chit agreement and no direct payment was made by TNEB to contract labourers like the Petitioners. The contractors had given certificates stating that they had engaged by them and based on such certificates, Mr.Justice Khalid had prepared a list of eligible persons. The actual days that was worked had not been verified at any point of time nor was it available.

16. Even otherwise factually, it is not possible to countenance the claim of the Petitioners. As narrated above, no records are available with the Board to even verify their claim. In respect of NMR and TCL,



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records were available. Records were never available in respect of the petitioners' engagement by the contractors and it was never verified. In the absence of records, it is not possible to verify the veracity of their claim. The contractors covered their employees under the Employees Provident and Miscellaneous Provisions Act, 1952. A person covered under the PF Act cannot have a claim for pension. The Petitioners cannot seek dual benefit especially given the amendment to Section 16 from 01.08.1988, by which the Respondents establishment ceased to be an establishment for the purpose of the EPF Act. In fact, alleging non-payment of contribution by the contractors and claims have been raised against the respondents. Being so, the Petitioners who were covered under the provident fund for the period they had worked with the contractors cannot claim pension for the same period. A contract labour like petitioners had filed a writ petition seeking 50% of his service as contract labour should be considered for the purposes of pension. A Division Bench of the Madurai Bench of this Court by judgment dated 28.10.2015 in WA(MD) No. 785 of 2015, rejected the claim and held that BP No.31 would not cover contract labourers. As the issue has



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already been decided by a Division Bench, the petitioners claim cannot be considered on this ground as well.

17. The Petitioners cannot claim benefits both under the Employees Provident Fund and Miscellaneous Provisions Act for the services rendered as Contract Labour and also under the Pension Scheme of the respondents. In the light of the aforesaid Division Bench order, the claim of the petitioners is liable to be rejected. Therefore, the impugned order of the 3rd Respondent rejecting the claim of the petitioners cannot be said as illegal. The absorption and regularisation of the petitioners' services were based on the orders of the Hon'ble Supreme Court. The orders of the Hon'ble Supreme Court did not provide for absorption of the petitioners from an earlier date. The Service Regulations of the respondents also do not permit for the same. Hence, the action of the respondents in not recognising 50% of the petitioners' service as Contract Labourer is just and valid.

18. It is relevant to rely upon the judgment of the Hon'ble



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Division Bench of this Court rendered in the case of ***The Superintending Engineer, Tuticorin Thermal Power Station Vs. Pondurai*** in WA(MD).No.785 of 2015, wherein the Hon'ble Division Bench rejected the claim of the contract labour like the petitioners and held as follows:

"5. We would have accepted such plea but for Rule 11 of the Tamil Nadu Pension Rules, 1978, which states that the date of commencement of qualifying service for the purpose of pension should be the date in which he takes charge in the first appointment either substantively or in an officiating or temporary capacity in the concerned department. While serving through the INDCOSERVE Society, it can never be said that the respondent/writ petitioner was in a qualifying service (i.e.) either substantively or in an officiating or in temporary capacity on the rolls of the appellants Board.

6. At best, the respondent was one among many members of the Society, working on contract basis with the appellants Board, which was abolished by G.O.Ms.No.950, Labour and Employment Department, dated 08.08.1990. Therefore, the Government Order makes it clear that there is demarcation consequent to G.O.Ms.No.950, Labour and Employment Department, dated 08.08.1990. Prior to that, the respondent and all



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other members of INDCOSERVE were Contract Labourers and not appointed either substantively or in an officiating or temporary capacity of the appellants Board in a qualifying service. On issuance of the said Government Order, pursuant to absorption on 01.05.1999, the respondent became an employee of the appellants Board. If that fact is clear and undisputed, the commencement of qualifying service would be reckoned from 01.05.1999 and not before that. Service as a member of the Society (INDCOSERVE), a contract which came to be abolished. can never be a qualifying service. In such view of the matter, as per Rule 11 of the Tamil Nadu Pension Rules, 1978, the respondent is ineligible for pension unless and until he puts in the qualifying years of service as required under Rule 43(2) of the Tamil Nadu Pension Rules, 1978. G.O.Ms.No.408, Finance (Pension) Department, dated 25.08.2009 or the Board's Proceedings, as has been prescribed earlier would be applicable only in respect of service viz., Nominal Muster Roll or Temporary Casual Labourer in the service of the Board and not for the members of a Society.

7. We find no reason to accept G.O.Ms.No.408, Finance (Pension) Department, dated 25.08.2009 or the



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Board's Proceedings could be extended to Contract Labourers, unless the Government or the Board specifically takes a conscious decision to extend the benefit to the members of the Society, who had put in long years of service as Contract Labourers and were subsequently, absorbed. We would, however, like to express our concern that the Government and the Board should consider and issue appropriate Government Orders similar to that of G.O.Ms.No.408, Finance (Pension) Department, dated 25.08.2009, to consider the plight of large number of employees, who had put in long years of service for the benefit of the Board even as Contract Labourers through the Society or otherwise.

8. Insofar as the present case is concerned, we find that neither G.O.Ms.No.408, Finance (Pension) Department, dated 25.08.2009 ??? the Board's Proceedings No.31, dated 08.09.2011, would come to the benefit of the respondent/writ petitioner and in terms of Rule 11 of the Tamil Nadu Pension Rules, 1978, which clearly provides that the commencement of qualifying service of a Government servant will be the date on which he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity. In the case on hand, appointment



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has not been made in respect of the present respondent/writ petitioner till 01.05.1999. He is not entitled to seek inclusion of the period of service as member of society for the purpose of pensionary benefits in the absence of rule or otherwise.

9. On an allegation of arbitrariness and unfair treatment, we called upon Mr.Karthick, learned counsel for the appellants to produce the records and justify that in all cases where the absorbed employees fell short of qualifying service they have been uniformly treated by declining the grant of pension. In order to dispel this plea and to prove that there is no arbitrariness or unfair treatment to one or other person, more particularly the respondent, Mr.Karthick, learned counsel for the appellants produced the details of all the employees who were absorbed on 1.5.1999 and who had qualifying service between 2 to 9 years and were not extended the said benefit. Accordingly, we hold that the order of the learned Single Judge directing appellants to consider the period of service as member of the Society for pensionary benefits is erroneous.

10. In the result, the writ appeal is allowed and the impugned order is set aside. The respondent/writ



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petitioner will be entitled to make a representation to the Board in the light of what we have indicated earlier to consider his plea and similarly placed persons for grant of pensionary benefits de hors the government order and board proceedings, as above. No costs. Consequently, connected miscellaneous petition is closed.”

19. In view of the above, this Court finds no infirmity or illegality in the order passed by the third respondent. Further the action of the third respondent for non considering the 50% of the petitioners' service as Contract Labourer cannot be declared as illegal. That apart, all the petitioners are receiving pension since they were absorbed in the regular service prior to 01.04.2003. Therefore, all the writ petitions are devoid of merits and liable to be dismissed. Accordingly, all the writ petitions are dismissed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

01.03.2024

Internet: Yes
Index: Yes/No
Speaking/Non-speaking order
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To

- 1.Chairman cum Managing Director,
Tamilnadu Generation and Distribution Corporation Limited,
No.144, Anna Salai, Chennai 600 002
- 2.The Chief Engineer(Personnel),
Tamilnadu Generation and Distribution Corporation Limited,



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No.144, Anna Salai, Chennai 600 002

3. Superintending Engineer,
Tamilnadu Generation and Distribution Corporation,
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Vengikkal,
Tiruvannamalai

G.K.ILANTHIRAIYAN, J.

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W.P.No.27020 of 2021, etc batch

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W.P.Nos.27020, 27040, 27038, 27035, 27032 of 2021, 14354 of 2022,
27028 of 2021, 14358, 23703, 23706, 23710, 23711, 23723, 23727,
23729, 23746, 23749, 26282, 26293, 26285, 26290, 26199, 26207,
26210, 26213, 31076, 31080, 31094, 31097, 32900, 32902,
32905, 32907, 750, 753, 755, 759, 774, 1539, 1542, 1546, 1548,
3421, 3425, 3429, 3431, 3434, 3731, 3735, 3737, 3738, 3740, 3745,
8047, 8051, 8054, 8058, 12914, 12916, 12917, 14378, 14516,
14830, 14880, 14884, 15327, 15348 & 21137 of 2022

01.03.2024