IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2024

CORAM
THE HONOURABLE **MR. JUSTICE S.S.SUNDAR**
AND
THE HONOURABLE **MS. JUSTICE R.N.MANJULA**

WA.No.1863/2024
and
Caveat No.309/2024 in CMP.No.5984/2024 , CMP.No.13466/2024

Tamil Nadu Electricity Regulatory commission,
rep. by the Secretary
previously at 19-A Rukmani Lakshmipathy Salai
(Marshalls Road) Egmore, Chennai-8.
4th floor, SIDCO Corporate Office Building
Thiru.Vi.Ka.Industrial Estate,
Guindy, Chennai 600 032.
Represented by its Secretary. .. Appellant/Respondents

Verus

1.Thiru.P.Muthusamy

2.State of Tamil Nadu,
rep by its Secretary to Government,
Energy Department, Fort.St.George,
Chennai 600 009.

3.The Deputy Accountant GenI/ES-II
Indian Audit & A/Cs Dept,
O/o Accountant General,

Tamil Nadu Economic & Revenue Sector Audit,
TNEB 3rd Floor, Western Wing,
144 Anna Salai, Chennai 600 002. .. Respondents

Prayer:-Writ Appeal filed under Section under Clause 15 of the Letters Patent Appeal, praying to set aside the order dated 21.07.2023 made in WP.No.36342 of 2016.

For Appellant	:	Mr.P.Muthukumar
For respondents	:	Mr.Rahul Balaji

ORDER

[Order of the Court was made by R.N.MANJULA J.,]

The Writ Appeal has been directed against the order of the learned single Judge made in W.P.No.36342 of 2016 dated 21.07.2023. The respondents in the writ petition are the appellants in this Writ Appeal. The writ petition has been filed by the respondents/petitioners seeking directions against the appellants/respondents to pay a sum of Rs.6,38,928/- along with interest accrued towards the balance sum due to the 1st respondent/petitioner under the Contributory Pension Scheme. The Writ Court has issued the direction as prayed. Aggrieved over that the appellant /

1st respondent has preferred this writ appeal.

2. The 1st respondent had been originally recruited as an Assistant Engineer in Tamil Nadu Electricity Board (hereinafter referred to as TNEB) during January 1980 and he continued to be in service until 15.05.2010. The 1st respondent/petitioner applied to the post of Director (Engineering -Grade-I) in pursuant to the notification issued by the appellant/Regulatory Commission on 26.08.2009 in New Indian Express Daily, inviting applications to the said post. He got selected and appointed as the Director (Engineering -Grade-I) and he joined duty in the said post on 19.05.2010. In order to enable him to join in the above post, he opted to retire from TNEB where he was working as an Engineer.

3. In the employment notice published calling for applications to the post of Director in (Tamil Nadu Electricity Regulatory Commission) TNEBRC, it has been stated that the candidates who have been selected by direct recruitment to the post specified therein could be covered under the Contributory Pension Scheme of the State Government. The 1st respondent/petitioner, after having been appointed as Director (Engineering-

Grade I) in the Regulatory Commission, gave a representation to extend the Contributory Pension Scheme to his benefit. The appellant/1st respondent vide his proceedings dated 29.05.2013 extended the scheme to the 1st respondent /petitioner with effect from 19.05.2010, on which date the 1st respondent /petitioner joined the Regulatory Commission.

4. From 25.05.2013 onwards the contribution for the 1st respondent/petitioner under Contributory Pension Scheme has been deducted from the 1st respondent/petitioner's salary and deposited it along with the matching contribution of the 1st appellant/1st respondent's and deposited it in a savings bank account to be operated jointly by the 1st respondent/petitioner and the appellant/1st respondent with Indian Overseas Bank, Sri Ram Nagar Branch and the same was informed to the 2nd respondent. As the 3rd respondent has sought certain clarification to the appellant/ Regulatory Commission as to the applicability of the Contributory Pension Scheme through the 2nd respondent, the appellant/ Regulatory Commission had given a clarification on 13.09.2014 and informed that in the notification itself it is mentioned about the applicability of Contributory Pension Scheme and hence, it can be allowed to the 1st respondent/petitioner. Subsequently the contributions are being made by both the appellant /1st respondent and the 1st respondent / petitioner to the above said account.

5. On attaining the age of superannuation the 1st respondent / petitioner retired from service on 31.05.2015. The appellant/Regulatory Commission vide his proceedings dated 29.05.2015 permitted the 1st respondent / petitioner to retire from service on 31.05.2015 and thereafter, at the request of the 1st respondent / petitioner, the appellant issued proceedings dated 17.12.2015 ordering the payment of Rs.6,38,928/- being the contribution made by the 1st respondent towards Contributory Pension Scheme along with Rs.50,482/- being the bank interest and aggregating to Rs.6,89,410/-. The said amount was received by the 1st respondent/petitioner through demand draft on 18.12.2015.

6. However, the equal CPS contribution made by the appellant/ Regulatory Commission to the tune of Rs.6,38,928/- has not been disbursed to the 1st respondent/petitioner. This had prompted the 1st respondent /petitioner to file a writ petition and seek appropriate directions.

7. The learned Single Judge had allowed the writ petition filed by the 1st respondent/petitioner and directed the appellant/Regulatory Commission and the respondents 2 and 3 to release a sum of Rs. 6,38,928/- together with interest accrued to the petitioner. Now the appellant/ Regulatory Commission has preferred this writ appeal by challenging the said order.

8. The learned counsel for the appellant/Regulatory Commission submitted that as per the Tamil Nadu Pension Rules-1978, a government servant shall not get two pensions in the same service or post at the same time or by the same continuous service and a person who had already retired and who had got re-employment shall not be entitled to a separate pension.

9. For the sake of clarity, Rule 7 of the Tamil Nadu Pension Rules is extracted as under:

> "**Section 7(1) in Tamil Nadu Pension Rules, 1978**
>
> (1)A Government servant shall not earn two pensions in the same service or post at the same time or by the same continuous service.
>
> **(2)** Except as provided in Rule 16, a Government servant who, having retired on a superannuation pension or retiring pension, is subsequently re employed shall not be entitled to a separate pension or gratuity for the period of his reemployment.

10. According to the appellant /1st respondent, the 1st respondent/ petitioner is re-employed in the Commission and hence, he is not entitled to get the second pension.

11. The learned counsel for the 1st respondent/petitioner submitted that Rule 7(2) has no applicability to the 1st respondent /petitioner, because the services rendered by the 1st respondent/petitioner as an

Assistant Engineer in the Tamil Nadu Electricity Board and his subsequent service rendered in TNERC as Director (Engineer-Gr-I) are two different services and hence, it cannot be considered as same post or service in order to impact Rule 7(2) of the Tamil Nadu Pension Rules, 1978.

12. The core issue revolves around the applicability of Rule 7(2) to the case of the 1st respondent/petitioner. The 1st respondent/ petitioner was an employee with the Tamil Nadu Electricity Board as an Assistant Engineer till 15.05.2010 before he joined the petitioner's commission. The post which have been called for by the petitioner's commission was for the Director (Engineer-Gr-I). 1st respondent/petitioner was selected and he joined in the new assignment on 25.05.2010. In order to enable him to join in the appellant/1st respondent commission, the 1st respondent/petitioner had given voluntary retirement from the services of the Tamil Nadu Electricity Board as on 15.05.2010. So it is claimed by the 1st respondent / petitioner that he switched over from one service to another service and hence it is not a continuous service or in the same service.

13. Admittedly the notification calling for the application to the post of Director (Engineer- Gr-I) was given by the appellant/1st respondent commission and not by the TNEB. The functions of the Board and the Commission are entirely different and at no stretch both can be considered as the same. No doubt the regulatory commission might have the regulatory functions of the Electricity Board and that would not equate the commission with that of the Board. The 1st respondent/ petitioner services have not been utilized in the commission by transfer /promotion/deputation. The assignment given to the 1st respondent as Director (Engineer Gr-I) is altogether a different service rendered by him with the Regulatory Commission.

14. However, it is claimed by the appellant/1st respondent that the service of the employees of the Regulatory Commission are being governed by the Rules, Regulations, orders and instructions given by the Government of Tamil Nadu and hence, the 1st respondent/petitioner appointment should only be construed as re-employment and that the commission was not independent of the government. Despite the appellant/1st respondent was clear in his stand that the 1st respondent/petitioner was entitled to Contributory Pension Scheme even during his services rendered as Director (Engineer-Gr.I) with the commission, subsequently he somersaulted and took a complete contradictory stand, in view of the objections raised by the 3rd respondent, denying the 1st respondent/petitioners entitlement.

15. The learned single Judge had relied on the decision rendered in the case of ***P.Arumugam Vs. Registrar, Tamil University Thanjavur*** reported in ***2008(1) L.L.N.314*** to render a finding to distinguish the services between the appellant commission and the TNEB. In the judgement of the Hon'ble Division Bench of this court in *P.Arumugam (cited supra)* a distinction was shown between the services rendered by an employee in the university and the state government though their salaries have been funded by the government.

16. No doubt the commission is funded by the government and it cannot be administered without the funds released by the government. The condition of service of the staff of the commission is issued as per the government order issued in G.O.MS.No.80 Energy (A1) Department, dated 19.08.2002. In view of the above government order, the Rules, Regulations, Orders and Instructions issued by the government of Tamil Nadu from time to time to regulate the service conditions of the employees of the government of Tamil Nadu would be applicable to the staff of the commission as well. If the staff of the commission are government servants, there is no necessity to issue a separate order prescribing the service condition for the staff of the commission. These actions of the Government would only show that the Board and the Regulatory Commission are two different entities, which have two different rules and regulations and terms and conditions of service.

17. Extending the similar terms and conditions of services of the Government staff to the staff of the commission cannot convert the staff of the commission as staff of the government. Only in view of the said position in the notification calling for applications to the post of the Commission, it is stated that the Tamil Nadu Electricity Regulatory Commission is a statutory body and that it has different powers and functions from that of the Board.

18. Even though it is stated in the notification that deputation channel is also open to persons who are already working government/public sector undertakings/ corporation/ Boards/ Electricity Board etc., the appointment of the1st respondent/petitioner appointment has not been done on deputation basis. After having got the appointment order on 12.12.2010, the petitioner was allowed to go on voluntary retirement from his earlier post on 15.05.2010; had he not allowed to go on voluntary retirement but was simply deputed to any post for which he had been selected in the commission, it could have been a continuity of service. In the instant case, the said process was not done. On the other hand, the 1st respondent/ petitioner was allowed to take the new post offered in the Commission as a new employment. In this regard it is relevant to refer the Division Bench judgement of this Court held in *P.Arumugam (cited supra)* is extracted as under:

> ***10.3***......*The pension earned by the appellant for the service rendered by him for the State Government was quite distinct and different from the service rendered by him for the respondent university. If the said distinction in the rendering of service by the appellant in the respondent university and in the State Government can be distinguished, there is no reason why the applicability of Rule 7 can be ignored in order to hold that the appellant does not suffer the disqualification of earning two pensions simultaneously for the same service. In our considered opinion, sub-rule (2) will have no application inasmuch as the said situation would arise only if the retirement of the appellant, after earning the retiring pension had taken place in the service of the respondent university at an earlier occasion and after such retirement on superannuation,pension or retiring pension there was any re-employment in the service of the respondent university once over again providing scope for earning another pension for such employment or continuous service.*

19. Another judgement of the Division Bench of this Court rendered in ***The government of Tamil Nadu and Ors Vs. Tamil Nadu Government Transport, Retired Employees Welfare Association and Ors*** reported in MANU/TN/0029/2008 would also assume relevance in this regard. The relevant portion of the said judgement is extracted hereunder:

"14. There is a difference of pension as is paid by the State Government and the pension as is paid by the Transport Corporation. So far as the State Government is concerned, its expenditure towards pension is made from the consolidated fund of the State Government, but so far as the Transport Corporation is concerned, pension is not paid from the consolidated fund of the State or from the State Government or any other local authority, but is paid from the funds generated by the corporation. A separate budgetary provision is made by the State Government every year to meet the expenditure towards payment of pension to the State Government pensioners. On the other hand, no such budgetary provision is made by State Government for payment of pension to the employees of the transport corporation, which is generated from the earning of the employees' contribution of contributory provident fund under the Pension Fund Trust formed for the purpose of the transport corporation. There is a difference between the two types pension, one paid by the State Government to its employees, which is not contributory in nature, but so far as the corporation is concerned, it is dependant upon contribution of the employee. While the State is bound to pay the pension to the Government employees, it has no liability nor required to give any guarantee to the corporation to pay pension to employees of the corporation.

Thus, it will be evident that the employees, who may earn pension from the State Government, if allowed pension by the Corporation for the service rendered by them in the corporation, it will not amount to *earning two pension in same service or post at the same time or by way of same continuous service and, thereby, not covered under Rule 7 of the Tamil Nadu Pension Rules."*

20. As the writ petitioner was employed in the Commission, there is no suppression of truth and it will not come under the concept of re-employment also. At the best, the regulation could have insisted that all those who desire to come from Board and other establishment to the commission should only opt the channel of *'deputation'* and in such case their services would have been considered as a continuous service on deputation. As the said formula has not been adopted here, the 1st respondent/petitioner had got the advantage of getting himself enrolled in the Contributory Pension Scheme available for the employees of the commission also. The 2nd respondent, who allowed the 1st respondent/ petitioner to go on voluntary retirement and terminated his services cannot now come and say that his employment with the commission is either a continuous service or re-employment. The learned Single Judge had rightly dealt the position of law in this regard and arrived at a right conclusion that the services of the

1st respondent /petitioner is not a re-employment but a fresh employment.

21. In view of the above discussion and reasons stated, we do not find any error or illegality in the order passed by the learned Single Judge in W.P.No.36342 of 2016, dated 21.07.2023. Therefore, the Writ Appeal stands **dismissed.** There shall be no order as to cost. Consequently connected miscellaneous petitions are closed.

[SSSRJ] [RNMJ]

06.11.2024

jrs
Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No
Speaking Order: Non-speaking order

To

1. The Secretary to Government,
State of Tamil Nadu,
Energy Department, Fort.St.George,
Chennai 600 009.

3.The Deputy Accountant GenI/ES-II
Indian Audit & A/Cs Dept,
O/o Accountant General,
Tamil Nadu Economic & Revenue Sector Audit,
TNEB 3rd Floor, Western Wing,
144 Anna Salai, Chennai 600 002.

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