



WEB COPY



W.P.No.35305 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2024

CORAM:

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

W.P.No.35305 of 2023

S.Anbazhagan

...Petitioner

-Vs-

1.The Chief Engineer,
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,
Tamil Nadu Generation and Distribution Corporation,
K.Pudur,
Madurai – 7.

... Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Mandamus, directing the Respondents to take into account 50% of the contract service of the Petitioner rendered from 01.04.1993 till July 2005 and consequently sanction regular pension under the old pension scheme.

For Petitioner : M/s.S.Meenakshi

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



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ORDER

This writ petition has been filed for direction directing the respondents to take into account 50% of the Contract Service of the petitioner rendered from 01.04.1993 till July 2005 and sanction regular pension under the old pension scheme.

2. The case of the petitioner is that he had joined in service of the TamilNadu Electricity Board, Tirunelveli Division, Periyar Hydro Generation Power House circle on 01.04.1993 as contract labour. He was qualified with 10th standard. In the year 2005, he was issued with regular appointment order on 11.08.2005 appointing him to the post of Helper in regular work establishment. On 30.04.2019 the petitioner retired from service. He was fixed in the new pension scheme of CPF benefit and he was not paid regular pension. Now, he seeks to include him in the old pension scheme.

3. The learned counsel for the petitioner submitted that he relied upon the judgement of Hon'ble Supreme Court of India in the case of ***State of Himachal Pradesh and another -vs- Sheela Devi*** reported in ***2023 SCC online SC 1272*** where it is held as follows:



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"i) The state shall take immediate steps to indicate the mode and manner of exercising option by all the employees concerned (who had been regularized after spells of contractual employment) regardless of the dates on which they were engaged i.e., prior to the year 2003 or subsequently, within a time frame, of within eight weeks from today.

iv) Time limit for payment too should be indicated and entire process should be completed within four months and all orders fixing pensions or family pension as the case may be, shall be issued."

4. On perusal of the records, it revealed that though the petitioner was working on contract basis, he was not properly appointed in the regular vacancy. He was issued with regular appointment order only on 11.08.2005 to the post of helper in the scale of pay of Rs.3050/-. Therefore, the petitioner is not entitled for old pension scheme since he was appointed only from 11.08.2005. That apart, Hon'ble Division Bench of this court held that neither G.O.Ms.No.408, Finance (Pension) Department, dated 25.08.2009 nor the Board's proceedings No.31, dated 08.09.2011 would come to the benefit of the



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writ petitioner and in terms of Rule 11 of TamilNadu 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 has not been made in respect of the petitioner till 10.08.2005. Therefore, he is not entitled to seek inclusion of period of service as contract labour for the purpose of officiating benefits. Hence, the judgement of the Hon'ble Supreme Court of India is not applicable to the case on hand.

5. Therefore, the representation of the petitioner cannot be considered and this writ petition is devoid of merits and liable to be dismissed. Accordingly, this Writ Petition is dismissed. No costs.

03.01.2024

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
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G.K.ILANTHIRAIYAN. J.

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