



W.P(MD).Nos.12735 to 12739 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 19.08.2024

ORDER PRONOUNCED ON : 22 .08.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).Nos. 12735, 12736, 12737, 12738 and 12739 of 2022

- | | |
|---------------------|--|
| 1.M.Chandran |Petitioner in W.P.No.12735 of 2022 |
| 2.K.Jabarullah Khan |Petitioner in W.P.No.12736 of 2022 |
| 3.R.Pitchaimuthu |Petitioner in W.P.No.12737 of 2022 |
| 4.M.Irulan |Petitioner in W.P.No.12738 of 2022 |
| 5.V.Kasi |Petitioner in W.P.No.12739 of 2022 |

Vs

1.The Chairman Cum Managing Director
Tamil Nadu Generation and Distribution Corporation Limited
NPKRR Maligai
144, Anna Salai
Chennai 2

2.The Superintending Engineer
Madurai Electricity Distribution Circle /Metro
K.Pudur, Madurai – 7

3.Madurai Corporation
Represented by its
Commissioner
Anna Maligai, Madurai

.....Respondents in all the petitions



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PRAYER in W.P(MD).Nos .12735 & 12738 of 2022: These Petitions have been filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order made in Lr.No.004009/SE/MEDC/MDU/Ado/Adms/Adm II/A3/F.Pension/2022 dated 11.05.2022 passed by the second respondent and quash the same as illegal and consequently direct the second respondent to revise the terminal benefits as well as the pension and re-fix the same in accordance with the proceedings made in (Per) FB TANGEDCO proceedings No.31 dated 08.09.2011 passed by the first respondent.

PRAYER in W.P(MD).Nos .12736 & 12737 of 2022: These Petitions have been filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order made in Letter No. 007211/SE/MEDC/Metro/Mdu/ADO/Adm2/A3/F.c.c./2022 dated 08.03.2022 passed by the second respondent and quash the same as illegal and consequently direct the second respondent to revise the terminal benefits as well as the pension and re-fix the same in accordance with the proceedings made in (Per) FB TANGEDCO proceedings No.31 dated 08.09.2011 passed by the first respondent.

Prayer in WP(MD).No.12739 of 2022: The Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the second respondent to revise the terminal benefits as well as the pension and



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re-fix the same in accordance with the proceedings made in (Per) FB TANGEDCO proceedings No.31 dated 08.09.2011 passed by the first respondent.

(In all the writ petitions)

For Petitioner : Mr.P.R.Prithviraj

For R1 & R2 : Mr.B.Ramanathan
Standing Counsel

For R3 : Mr.K.K.Kannan

COMMON ORDER

The instant writ petitions have been filed by the retired employees of TANGEDCO challenging the order dated 08.03.2022 and 11.05.2022 passed by the second respondent herein wherein their request for reckoning 50% of the services rendered by them as daily wage employees in Madurai Municipal Corporation for calculation of pensionable service has been rejected.

(A) Factual Background:

2.The petitioners were appointed in second half of 1979 and first half of 1980 as daily wage employees for the purpose of celebrating 5th World Tamil Conference at Madurai which was organised by the Government of Tamil Nadu. After completion of the said conference, the daily rated employees were relieved from service. The employees had approached the Labour Court by filing I.D.No.403 of 1989. The Labour Judge, Madurai had



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arrived at a finding that the employees have not established the fact that they were employed through out the year in the electricity wing of Madurai Corporation.

3.The Labour Court had further found that the employees have not established the fact that they were employed for 240 working days in a particular year. They were employed on certain days for which the wages were paid on daily basis. Therefore, the disengagement of the employees cannot be treated as retrenchment. Based upon the said findings, the Labour Court had directed the Madurai Corporation to appoint the writ petitioners among others as fresh appointment from 01.01.1993 onwards without back wages, but with continuity of services.

4.Based upon the award of the Labour Court, the employees were accommodated in Madurai Corporation in the year 1993. The electricity wing of Madurai Corporation got merged with Tamil Nadu Electricity Board and therefore, the writ petitioners were relieved from Madurai Corporation and they were absorbed into Tamil Nadu Electricity Board with effect from 01.05.1995. Thereafter, the writ petitioners were treated as permanent employees of TNEB and they served in TNEB till their superannuation.



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5. After attaining superannuation, the writ petitioners had requested the Tamil Nadu Electricity Board to consider the period spent by them as daily wage employees in Madurai Corporation for the purpose of calculating the pensionable services. However, when the said request was rejected, the petitioners have filed W.P(MD).Nos.16960 of 2012, 11503 of 2015, 17806 to 17808, 17927 to 17933 of 2013, 1357 to 1376 and 4871 to 4874 of 2015. This Court by an order dated 24.06.2019 had disposed of the writ petitions with the following directions.

(i) The writ petitioners are directed to furnish all the service particulars and documents relating to their engagement period of service and necessary documents for the purpose of considering their cases with reference to the rules 11 of the Tamil Nadu Pension Rules 1978 by the respondent Tamil Nadu Electricity Board.

(ii) If any such records, service particulars etc., are available with the third respondent/Madurai Corporation, they shall also co-operate by furnishing those details to all these writ petitioners.

(iii) The petitioners along with their documents shall submit representations to the second respondent/competent authority within a period of 8 weeks from the date of receipt of a copy of this order

(iv) If any such appeal/representations are received from these petitioners along with all requisite documents and service particulars etc, then the case of the writ petitioners are to be



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considered strictly in accordance with the terms and conditions stipulated in the amended rule 11 (4) of the Tamil Nadu Pension Rules only for the purpose of counting of 50% of their temporary services for the purpose of calculating the qualifying service for grant of pension and pensionary benefits.

(v)Such an exercise shall be done by the second respondent/ competent authorities, as expeditiously as possible and preferably within a period of three months from the date of receipt of the said representation from these writ petitioners.

(vi)Accordingly, these writ petitions are disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.”

6. Based upon the orders of this Court, the petitioners have sent individual representations to TANGEDCO (formerly TNEB) to calculate 50% of their services rendered in Madurai Corporation for the purpose of calculating pensionable service as contemplated under Rule 11(4) of Tamil Nadu Pension Rules, 1978.

7. After considering their representations, the respondent authorities, out of 35 employees, have accepted the case of 22 persons based upon the records furnished by them. As far as the balance 13 persons are concerned, their requests were rejected on the ground that they have not produced any proper records to establish their period of employment between 1979 and 1993. The respondent authorities found that the award of the Labour Court is



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insufficient to arrive at any conclusion. These individual orders are put to challenge in the present writ petitions.

(B) Contentions of the counsels appearing on either side:

8.The learned counsel appearing for the writ petitioners had extensively relied upon the award of the Labour Court and contended that the Labour Court has given a specific finding that the petitioners were appointed in the second half of 1979 and first half of 1980. He had relied upon the appointment order issued by the Madurai Corporation which were marked before the Labour Court. He had further contended that the Corporation has forwarded the service register of only some of the employees to the TANGEDCO and therefore, TANGEDCO had accepted the said contention and has reckoned 50% of the services rendered in Madurai Corporation. When service records of the present writ petitioners were not forwarded by the Madurai Corporation, the TANGEDCO authorities have to accept the certified copy of the award passed by the Labour Court so as to find out the number of years worked by the writ petitioners in Madurai Corporation. They cannot discriminate between the employees who are similarly placed. When the award of the Labour Court specifically points out with regard to the date of appointment, there cannot be any impediment for TANGEDCO officials to calculate the pensionable service from the said date onwards.



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9.The learned counsel had further relied upon the proceedings of TANGEDCO dated 08.09.2011 wherein the authorities in paragraph No.3(iii) have agreed to rely upon the documents produced by the retired employees if any other documentary evidence in proof of service is not available. Hence, he prayed for setting aside the order passed by the respondent officials and to reckon 50% of the services rendered in the electricity wing of Madurai Corporation for the purposes of pensionable service.

10.Per contra, the learned counsel appearing for the respondents 1 and 2 had relied upon the counter and contended that the Labour Court in their award has specifically pointed out that the petitioners have not established their continuous service on 240 days in a calendar year and their order of termination was also upheld. The Labour Court had only directed the Corporation to appoint them afresh from 01.01.1993. He had further contended that the service register maintained by Madurai Corporation for all the writ petitioners have been received by TANGEDCO.

11.A perusal of the those service registers clearly indicate the appointment of the writ petitioners only from 01.01.1993. Therefore, it is not correct to contend that their service registers were not received from Madurai Corporation. When the service register of the writ petitioners reveals they were appointed only on 01.01.1993, there is no record whatsoever to



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establish the period of service of the writ petitioners prior to the said date, TANGEDCO had no other option than to reject the request of the writ petitioners. Hence, he prayed for dismissal of the writ petitions.

12.I have carefully considered the submissions made on either side and perused the material records.

(C) Conclusion:

13.The writ petitioners along with others, totalling 595 employees, working in the electricity wing of Madurai Corporation were absorbed by the Tamil Nadu Electricity Board in the year 1995. The service register of all those employees have been handed over to TANGEDCO. After attaining superannuation, a dispute arise only with regard to 35 employees in reckoning their past services rendered in the Madurai Corporation. TANGEDCO had accepted the case of 22 employees based upon their service registers and reckoned their 50% of their past services in Madurai Corporation for the purposes of calculating pension. Dispute has arisen only with regard to 13 employees who were not able to produce any records to establish their past services in Madurai Corporation.

14.A perusal of the service register of the writ petitioners reveals that they were appointed only with effect from 01.01.1993 based upon the award of the Labour Court. Their past services are not recorded in their service registers. Therefore, the service register of the writ petitioners is not helpful



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to arrive at any conclusion relating to their past services in Madurai Corporation.

15.The learned counsel for the writ petitioners had relied upon the appointment orders issued to them in 1979 and 1980 and the reference made to these appointment orders in the award of the Labour Court to establish that they have proved their past services in Madurai Corporation from the year 1979 and 1980. As rightly contended by the learned Standing Counsel appearing for TANGEDCO, these appointment orders will reflect only their initial date of appointment and that will not reflect any break-in-service. Merely because the petitioners were appointed in 1979 and 1980, it does not mean that they were continuously working till they were disengaged by Madurai Corporation on 01.03.1982. Though the Labour Court award had directed the Madurai Corporation to grant fresh appointment to the writ petitioners from 01.01.1993 with continuity of service, the entire burden is upon the writ petitioners to establish that they had worked continuously from 1979 till their disengagement.

16.This Court in WP(MD).No.16960 of 2012 etc, dated 24.06.2019 had directed the writ petitioners to furnish all the service particulars and documents relating to their engagement, period of service and necessary documents for the purpose of considering their cases with reference to Rule 11 of the Tamil Nadu Pension Rules 1978. However, the petitioners have



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miserably failed to do so and therefore, the present impugned orders have been passed rejecting the request of the petitioners for calculating 50% of their past services. This Court had further directed the authorities to consider the representation given by the writ petitioners strictly in accordance with terms and conditions stipulated in Amended Rule 11(4) of Tamil Nadu Pension Rules.

17.The respondents TANGEDCO had accepted the case of 22 employees out of 35 and has proceeded to calculate 50% of their past services. They have rejected only the case of 13 persons. Therefore, it is clear that TANGEDCO officials have scrutinized the records, applied their mind and they have arrived at a decision to reject the request of the employees whose service record do not reflect their past services. The award of the Labour Court clearly points out that the petitioners were engaged on a day to day and there is no proof that they received salary on a monthly basis. Therefore, one of the ingredients under Rule 11(4) of the Tamil Nadu Pension Rules has not been satisfied.

18.As per second proviso to Rule 11(4), if there was a break-in-service from absorption in regular service, the same has to be condoned by the orders of the Head of the Departments, in which the employees were regularly absorbed and such period of break, shall not count for the purposes of pensionary benefits. Therefore, it is clear that if Rule 11(4) of the Tamil Nadu



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Pension Rules is strictly followed as directed by this Court, the petitioners do not qualify to reckon their 50% of their past services in Madurai Corporation.

19.In view of the above said deliberations, there are no merits in the writ petitions and all the writ petitions stand dismissed. No costs.

22.08.2024.

Internet : Yes/No
Index : Yes/No
NCC : Yes/No
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R.VIJAYAKUMAR, J.

msa

A common Pre-delivery order made in

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