



W.A.(MD) No.712 of 2018

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.07.2024

CORAM:

**THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
and
THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

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A.Maharaja

... Appellant

-vs-

1.The Chairman-cum-
Managing Director
Tamilnadu Generation and
Distribution Corporation
10th Floor, NPKRR Maligai
144, Anna Salai
Chennai-600 002

2.The Superintending Engineer
Tamilnadu Generation and
Distribution Corporation
Madurai Distribution Circle
Madurai-7

3.The Executive Engineer
Tamil Nadu Water Supply and
Drainage Board
RMS Division, Madurai
[R3 is impleaded as per Court order
dated 25.06.2024 in C.M.P.(MD) No.8053
of 2024]

... Respondents



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Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 07.02.2018, passed in W.P.(MD) No.6595 of 2017, on the file of this Court.

For Appellant : Mr.S.Sivakumar

For Respondents : Mr.B.Ramanathan
for TANGEDCO for R1 & R2
Mr.B.Vijay Karthikeyan for R3

J U D G M E N T

[Judgment of the Court was made by A.D.JAGADISH CHANDIRA, J.]

This intra court appeal has been filed by the writ petitioner against the order of the learned Single Judge, dated 07.02.2018 passed in W.P.(MD) No.6595 of 2017.

2. It is the case of the appellant / writ petitioner that he joined as Fitter on 19.09.1984 in TWAD Board. Subsequently, he resigned from TWAD Board and got relieved with effect from 16.11.1987 and he joined in the Tamil Nadu Electricity Board as Helper on 16.11.1987. He submitted a



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representation to the respondent – TWAD Board seeking to count the service rendered by him from 19.09.1984 to 15.11.1987 for pension purpose. The said representation came to be rejected by the second respondent *vide* order dated 27.01.2017. Challenging the same, the appellant filed the above writ petition. The learned Single Judge, finding that the appellant did not join the TANGEDCO / TNEB, after getting no objection certificate / permission from the former employer i.e. TWAD Board, by order dated 07.02.2018, dismissed the writ petition. Challenging the same, the present writ appeal.

3. Learned counsel for the appellant would submit that the appellant had submitted his resignation only on the ground of illness and his resignation was accepted by the respondent – TWAD Board only after he joined in the respondent – TANGEDCO / TNEB. He would further submit that the former employer i.e. TWAD Board, by proceedings dated 03.07.1991, has settled the provident fund account of the appellant with interest upto February, 1988 and thereby, the subsequent employer i.e., TANGEDCO / TNEB ought to have added the service rendered by the appellant in the TWAD Board. In support of his contentions, he has placed reliance upon the decision of this Court in the case of ***D.Vijayarangan vs. Secretary, Sales Tax Appellate Tribunal***, reported in ***(2009) 3 MLJ 1005***.



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4. Per contra, learned counsel appearing for the respondents 1 & 2, on instructions, would submit that as per Rule 23 of the Tamil Nadu Pension Rules, 1978, resignation from a service or post entails forfeiture of past service. Provided that a resignation shall not entail forfeiture of past service, if it has been submitted to take up with proper permission from the former employer. In the case on hand, the appellant had not obtained no objection certificate / permission from his former employer i.e. TWAD Board, thereby, his earlier services have to be forfeited. Further, appellant was also appointed by direct appointment in TANGEDCO / TNEB and his name was not sponsored by the former employer.

5. This Court, by order 25.06.2024 in C.M.P.(MD) No.8053 of 2024, has impleaded the TWAD Board as a party respondent.

6. Learned counsel appearing for the respondent – TWAD Board, on instructions, would submit that the appellant was working as Fitter in the respondent – TWAD Board, but, however, without obtaining no objection certificate / permission from the TWAD Board, he had tendered his resignation and joined in the respondent – TANGEDCO / TNEB. He would



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WEB ROOM further submit that settlement of provident fund account will not automatically mean that his resignation was accepted and no objection certificate / permission was given by the respondent – TWAD Board. He would further submit that the learned Single Judge finding that the appellant had not obtained no objection certificate / permission from his former employer i.e. TWAD Board, has rightly dismissed the writ petition filed by the appellant. He would further submit that the decision relied on by the learned counsel for the appellant in ***D.Vijayarangan***'s case (cited supra), is not applicable to the case on hand, since the appellant had already resigned and the forfeiture was on account of not getting no objection certificate / permission from the former employer i.e. TWAD Board.

7. Heard the learned counsel on either side and carefully perused the materials available on record.

8. For the sake of convenience, Rule 22(3) of the Tamil Nadu Pension Rules, 1978, is extracted hereunder:

“23. Forfeiture of service on resignation. - (1)
Resignation from a service or post entails forfeiture of past service:



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Provided that a resignation shall not entail forfeiture of past service if it has been submitted to take up with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies.

2. Interruption in service in a case falling under the proviso to sub-rule (1), due to the two appointments being at different stations, not exceeding the joining time permissible under the rules of transfer, shall be covered by grant of leave of any kind due to the Government servant on the date of relief or by formal condonation to the extent to which the period is not covered by leave due to the Government servant.”

9. At this juncture, it would be worthwhile to refer Rule 41 of the Tamil Nadu State and Subordinate Services Rules, which is extracted hereunder:

“41. Consequences of resignation - *A member of a service shall if he resigns his appointment, forfeit not only the service rendered by him in the particular post held by him at the time of resignation but all his previous service under the Government.*

The reappointment of such person to any service shall be treated in the same way as a first appointment to such service by direct recruitment and all rules governing such



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appointment shall apply; and on such reappointment he shall not be entitled to count any portion of his previous service for any benefit or concession admissible under any rule or order:

Provided that nothing contained in this rule shall effect the operation of proviso to rule 23 or of rule 25 of the Tamil Nadu Liberalised Pension Rules, 1978:

Provided further that a member of a service, who has resigned his appointment and contested in the General Election to Parliament or State Legislature or in the Elections to local bodies either as a party candidate or as an independent candidate, shall not be eligible for reappointment to any service.”

10. On perusal, we find that the appellant though was previously employed in the TWAD Board, he had not been given no objection certificate / permission to join the TANGEDCO / TNEB and his resignation was not accepted by the respondent – TWAD Board, while he was joining in the TANGEDCO / TNEB. Further, the appellant has not produced any material to show that his resignation was on account of illness and that no objection certificate / permission was granted to him by the TWAD Board. Further, his appointment in TANGEDCO / TNEB was also by direct recruitment and his name was not sponsored by the former employer i.e., TWAD Board and he had not indicated anything about his past service. In such circumstances, we do



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not find any infirmity in the order passed by the learned Single Judge and the writ appeal is, therefore, liable to be dismissed.

11. Accordingly, the writ appeal is dismissed. No costs.

[A.D.J.C., J.] [K.R.S., J.]

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NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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