



Writ Petition No.16298 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **29-01-2025**

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THE HONOURABLE MR JUSTICE BATTU DEVANAND

WP No. 16298 of 2019

Tmt. V.Jothi,
W/o.Vignoban, No.6/32, Ashok Nagar West
Street, Ganapathipuram, East Tambaram,
Chennai 600 059.

Petitioner(s)

Vs

1.Tamilnadu Generation and
Distribution Corporation Ltd., (Formerly Tamil
Nadu Electricity Board),

Rep. by its Chairman and Managing Director,
No.144, Anna Salai, Chennai 600 002

2. Chief Engineer (Personnel),
Tamil Nadu Generation and Distribution corporation Ltd.,
(Formerly Tamil Nadu Electricity Board),
No.144, Anna Salai, Chennai 600 002.

3. The Superintendent Engineer,
Chennai Electricity Distribution Circle (South), Tamil Nadu Generation and
Distribution Corporation Ltd., No.110,
K.V.Sub - Station Compound ,
K.K.Nagar, Chennai 600 078.

Respondent(s)

PRAYER : Writ Petition filed under Article 226 of the Constitution of
India, praying to issue a Writ of Certiorarified Mandamus, to call for the



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records pertaining to the order dated 30.12.2010 in Letter no.005495/130/Ni.Pi-2/U1/Ko/2010 issued by the third respondent in denying the petitioner's pensionary benefits payable to her husband, quash the same and also direct the respondents to pay the petitioner DCRG, Pension and other terminal benefits from the date of superannuation of petitioner's husband(26.02.2006) to the date of his death(23.11.2009) as revised from time to time, with arrears and other consequential benefits and also to pay her family pension from 24.11.2009, together with arrears and interest at the rate of 12% per annum.

For Petitioner : Ms.H.Nandhini for Mr.V.Ajoy Khose

For Respondents : Mr.David Sundar Singh

ORDER

This Petition has been filed seeking for issuance of a Certiorarified Mandamus, to call for the records pertaining to the order dated 30.12.2010 in Letter no.005495/130/Ni.Pi-2/U1/Ko/2010 issued by the third respondent in denying the petitioner's pensionary benefits payable to her husband, quash the same and also to direct the respondents to pay the petitioner DCRG, Pension and other terminal benefits from the date of superannuation of petitioner's husband(26.02.2006) to the date of his death(23.11.2009) as



revised from time to time, with arrears and other consequential benefits and also to pay her family pension from 24.11.2009, together with arrears and interest at the rate of 12% per annum.

2.Heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the materials available on record.

3.The case of the petitioner is that she is a widow. Her husband joined in the respondent Board on 04.02.1971 as Temporary Casual Labour(TCL). He was on daily wages but paid on monthly basis. Later, he became a full time worker. He was brought into regular service as Permanent Watchman on 07.10.1976 and he was granted scale of pay, Dearness allowance and another allowances. He was transferred to Tambaram. Later by an order dated 26.05.1977, he was appointed as regular Helper. He retired from service on 28.02.2006 on attaining the age of superannuation. He died on 23.11.2009. However, the pensionary benefits of the petitioner's husband were not paid till his death. The petitioner made several representations to the respondents to pay the pensionary benefits payable to her husband including the arrears of monthly



pension till his death and requested to pay the family pension from the date of her husband's death.

4. However, on consideration of the petitioner, the third respondent passed impugned order dated 30.12.2010, denying the pensionary benefits payable to her husband, including monthly pension till his death on the ground that he had rendered only 9 years and 9 months service as a regular workman. It is further stated that since he did not render minimum required 10 years of service, which has to be treated as qualifying service for pensionary benefits, he was not eligible to receive monthly pension. The respondents even did not pay the Gratuity, PF benefits, etc. The petitioner made an application dated 09.06.2011 under the RTI Act and sought for the service particulars of her husband along with a copy of the Service Register. After receipt of the same, she came to know about the service particulars of her husband and also about his temporary casual service before his regular appointment for about 5 years. In reply dated 20.04.2012, it is also informed to the petitioner that the respondents sought for permission from the Chief Engineer (Personnel) for sanctioning and disbursing the terminal benefits to the petitioner. In spite of such reply and assurance for sanction of terminal



benefits, unfortunately, the respondents did not pay and settle the terminal benefits to the petitioner. The petitioner again made a representation on 30.03.2017 and requested to sanction the terminal benefits, by pointing out that if the fraction of service above 3 months is rounded off and if half of the temporary service is added, the petitioner's husband had completed more than 13 years, which satisfies the qualifying pensionable service. However, there was no reply from the respondents. Under these circumstance, the petitioner has constrained to file the present Writ Petition.

5.A counter affidavit has been filed on behalf of the third respondent. It is averred in the counter affidavit that the petitioner's husband was working as Field Assistant in the respondent Board and at that time, he was unauthorisedly absent from duties from 01.02.1989 and he did not turn back to the duty. On 18.04.2004, he approached the respondents and requested to relieve him from service and settle his terminal benefits due to his ill-health but he had not submitted any medical report to the respondent Board. Thereafter, the respondent Board has taken steps to initiate disciplinary proceedings against the petitioner's husband for his unauthorised absence. The petitioner's husband attained the age of superannuation on 28.02.2006.



Before reaching of his age of superannuation, he made a representation to the respondent Board to take action for relieving him from service and settle his terminal benefits. The respondent Board has considered his representation and relieved him from the Board service without prejudice to the disciplinary proceedings to be initiated against the petitioner's husband on 28.02.2006.

6.It is further averred that the respondent Board informed the petitioner that the disciplinary Proceedings have been initiated against the husband of the petitioner. Meanwhile, he expired on 23.11.2009. Thereafter, the petitioner made a representation to disburse her husband's terminal and pensionary benefits, which has been considered by the respondents. The respondent Board decided to take disciplinary action against him for his unauthorised absence for the period of 19 years 7 months. Meanwhile, he expired. While so, the respondent Board is unable to take any action against the petitioner's husband. Hence, the respondent is not in a position to disburse the terminal benefits without any decision made on the petitioner's husband's unauthorised absence.



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7.It is further averred in the counter affidavit that Rule 43(3) of the Tamil Nadu Pension Rules (herein after referred to as "the Rules) as relied on by the petitioner is not applicable to the petitioner. The petitioner's husband had not come into the purview of the pensionary benefits because he had not completed 10 years of qualifying service. Therefore, the petitioner's claim is not admissible and as such, the petitioner's representation has been rejected by the respondent Board on 30.11.2010.

8.The learned counsel on either side have advanced their arguments based on the averments made in the affidavit and the counter affidavit. The admitted facts in this case are that the petitioner joined in the respondent Board on 04.02.1971 as Temporary Casual Labour (TCL) and he was brought into regular service as Permanent Watchman on 07.10.1976. He was appointed as regular Helper on 26.05.1977. He reached the age of superannuation on 28.02.2006 and he died on 23.11.2009. It is also an admitted fact that the petitioner was absent from duties unauthorisedly with effect from 01.02.1989 and he approached the respondent on 18.04.2004 only and requested to relieve him from service and to settle the terminal benefits due to his ill-health.



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9. In the counter affidavit, the third respondent stated that they initiated disciplinary proceedings against the petitioner for his unauthorised absence and informed to the petitioner. But nowhere in the counter affidavit, it is stated that on which date they initiated disciplinary proceedings against the petitioner is not mentioned. It is settled law that the date of initiation of disciplinary proceedings is the date when charge memo was issued to the delinquent employee. Admittedly, in the present case, no charge memo was issued to the petitioner. As per the contention of the respondent Board, the husband of the petitioner approached the respondents on 18.04.2004 and requested them to relieve from his service by settling the terminal benefits. He attained the age of superannuation on 28.02.2006 and died on 23.11.2009. From the year 18.04.2004 to 23.11.2009, admittedly no charge memo was issued to the petitioner and initiated disciplinary proceedings against him. As such, it is clearly established that no disciplinary proceedings were initiated against the petitioner till his death. As seen from the impugned order dated 30.10.2010, it came to understand that the request of the petitioner was rejected on the ground that the husband of the petitioner could not get the qualified service of 10 years for pension



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as per the Pension Rules, she is not entitled for the relief as sought in this petition. According to the respondents, the petitioner is having 9 years and 9 months service only. He had not completed 10 years qualifying service. As such, the rejection of petitioner's representation by the respondent Board is sustainable.

10. At this stage, the learned counsel for the petitioner had drawn the attention of this Court to the Rule 43(3) of the Rules, 1978 for proper adjudication of the case. The said Rule is extracted herein under:

"{(3) In calculating the length of qualifying service, fraction of a year equal to (three) months and above shall be treated a completed one half year and reckoned as qualifying service".

11. With respect to the contention of the petitioner that to calculate the 50% service temporarily rendered by the petitioner's husband in the respondent Board with effect from 04.02.1971 to 06.10.1976, the learned counsel for the petitioner has relied on the Rules, 1978.

Rule 11(2) is extracted herein under:

"(2). Half of the service paid from contingencies shall be



allowed to count towards qualifying service for pension
alongwith regular service subject to the following conditions".

12.This Court has carefully examined the above extracted Rules. Though there is sufficient force in the contention of the learned counsel for the petitioner that half of the services rendered by the petitioner's husband temporarily also has to be considered to determine the qualifying service as per Rule 11(2) of the Rules, 1978, in view of the facts and circumstances of the case and to consider the request of the petitioner in this case, in our considered opinion it is not necessary to look into that fact.

13. As per the contention of the respondents, the petitioner's husband has completed 9 years and 9 months regular service only and as he had not completed 10 years of qualifying service, the petitioner's claim is not admissible. But as per Rule 43(3) of the Rules fraction of a year equal to (three) months and above shall be treated a completed one half year for calculating the length of qualifying service. If the respondents had considered the case of the petitioner in the light of the Rule 43(3) of the Rules, they can understand that the petitioner has completed 10 years of



qualifying service. There is no dispute with regard to adopting the Rules in toto by the respondent Board. As and when the respondent Board adopted the Rules, they have to strictly follow Rule 43(3) of the Rules in calculating the length of qualifying the service of the petitioner's husband. As per Rule 43(3) of the Rules, it has to be construed that the husband of the petitioner deemed to have completed 10 years of qualifying service and as such, the husband of the petitioner is entitled for the pension and all other monetary benefits and the petitioner is also entitled for the family pension from the date of death of her husband.

14. For the above said reasons, this Court is of the considered opinion that the petitioner has made out a strong case warranting interference of this Court by quashing the order impugned in this Writ Petition and to grant relief to the petitioner as prayed for.

15. Accordingly, this Writ Petition is allowed with the following directions:

(i) the order impugned dated 30.12.2010 in Letter no.005495/130/Ni.Pi-2/U1/Ko/2010 issued by the third respondent is



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hereby quashed.

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(ii) The respondents are directed to pay petitioner's pensionary benefits payable to her husband viz., DCRG, Pension and other terminal benefits from the date of superannuation of petitioner's husband(26.02.2006) to the date of his death (i.e.) 23.11.2009 as revised from time to time, with arrears and other consequential benefits and also to pay her family pension from 24.11.2009, together with arrears and interest at the rate of 6% per annum.

(iii) The respondents shall settle all the benefits to the petitioner within a period of six (6) weeks from the date of receipt of a copy of this order and they shall continue to pay family pension to the petitioner regularly without fail.

No costs.

29.01.2025

Index : Yes/No
Speaking order: Yes/No
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To

1. Tamilnadu Generation and Distribution Corporation Ltd., (Formerly Tamil Nadu Electricity Board), Rep. by its Chairman and Managing Director, No.144, Anna Salai, Chennai 600 002.
2. Chief Engineer (Personnel),
Tamil Nadu Generation and Distribution corporation Ltd., (Formerly Tamil Nadu Electricity Board, No.144, Anna Salai, Chennai 600 002.
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BATTU DEVANAND, J

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