

**S.Antonymuthu Vs. 1.The Chief Engineer (Appointment),**

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**SooperKanoon Citation :** [sooperkanoon.com/1168181](http://sooperkanoon.com/1168181)

**Court :** Chennai

**Decided On :** Jul-30-2014

**Judge :** S.Nagamuthu

**Appellant :** S.Antonymuthu

**Respondent :** 1.The Chief Engineer (Appointment),

**Judgement :**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

30. 07.2014 CORAM THE HONOURABLE MR.JUSTICE S.NAGAMUTHU W.P.(MD)No.843 of 2012 and M.P.(MD) No.1 of 2012 S.Antonymuthu ... Petitioner Vs. 1.The Chief Engineer (Appointment), Tamil Nadu Electricity Board, Anna Salai, Chennai - 600 002. 2.The Superintending Engineer, Thoothukudi Electricity Distribution Circle, Thoothukudi. 3.The Assistant Engineer, O/o.The Assistant Engineer, DISTN/TEDC/TANGEDCO, Tamil Nadu Electricity Board, Soorangudi. ... Respondents Prayer This Writ Petition is preferred under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the 2nd respondent in connection with the impugned order of retirement issued by him in his Proceedings in Ka.No.045805/5797/Ko.O.Na./Vu.Ni.A.NiPi3/Vul/2010-9 dated 29.10.2011 and consequential relieving order passed by the 3rd respondent in his Proceedings in Ku.A.No.Vu.Po./Sa.Ka.Pe/Soorangudi/Su.Mi.Pa.Va/ Ko./No.237/11 dated 29.10.2011 and to quash the both as illegal and arbitrary and consequently to

direct the respondents to allow the petitioner to complete the service till he attains the age of 58 years. !For Petitioner : Mr.G.Thalaimutharasu ^For Respondents : Mr.A.U.Ramanathan Standing Counsel :

## ORDER

The petitioner initially joined as Helper in Tamil Nadu Electricity Board with effect from 17.11.1995. Subsequently, he was promoted as Wireman in the year 1999 and then as Line Inspector with effect from 02.03.2010. At the time when he joined duty, he claimed that his date of birth is 07.02.1960. This claim was made by the petitioner by producing a record sheet allegedly issued by the Headmaster of St. Joseph Middle School, Keelamudiman. While the petitioner was so working, a complaint was received that the said certificate was a fraudulent certificate. Based on the same, a charge memo was issued to the petitioner by the Additional Chief Engineer, Tamil Nadu Electricity Board, Thoothukudi by his proceedings in F.M.vz;.06473/epgp.3(2)/Bfh.x.e./06, dated 16.03.2006. According to the charge memorandum, the petitioner has a daughter by name Jansirani, who was born on 30.06.1964. This was evident from the Birth Certificate issued by the Sub Registrar, Vilathikulam. Going by the birth certificate of his daughter, since it was found that the petitioner would have been hardly four years as on the date of birth of his daughter, if the record sheet of the petitioner has been true, charges were framed. The petitioner denied the charges and enquiry was held into the charges and the enquiry officer held that the charges were proved. Thereafter, the Additional Chief Engineer by his proceedings in F.M.vz;.06473/epgp.3(2)/Bfh.x.e./06-4, dated 23.09.2006, imposed a punishment of reduction of his pay to the minimum or the time scale of the post of wireman as on the date of issue of that order, which would operate for future increments. That order became final.

2. Thereafter, one Ponnusamy S/o. Sankaralingam of Mettur Village sent another complaint that though the petitioner had crossed more than 60 years of age, he was allowed to continue even though it was found that the certificate produced by the petitioner in respect of his age is a bogus document. Based on the same, again the records were looked into and the matter was referred to Vigilance Police. The Additional Director General of Police, Vigilance by his Letter No.4092/B4/B42/08-7 dated 11.10.2008, submitted an enquiry report, wherein he

has stated as follows: ".i. As he has produced bogus school certificate (Record Sheet) Th.S.Anthonymuthu, Wireman had already been awarded punishment. ii. The Regional Medical Board, Tirunelveli Medical College Hospital, Tirunelveli II has issued a certificate that on examination of Th.S.Anthonymuthu's physical appearance and on perusal of school Mark Sheet his age is 47 (Forty Seven years) on 23.7.07. iii. In the Birth certificate issued by the Sub Registrar, Vilathikulam, on 30.06.1964 one female baby was born to Th.S.Anthonymuthu and his wife Tmty.Maimoon. iv. It is reported that his elder daughter, Tmty.Jansirani @ Johas Punitha is about 45 years old. v. On comparing with his daughter's age, the counter petitioner may be more than 58 years old. vi. In his bio-data his date of birth and retirement has been mentioned as 7.2.1960 and 28.2.2018 respectively.". Based on the same, the Chief Engineer (Personnel) issued instruction to the Superintending Engineer, Tuticorin Electricity Distribution Circle, Tuticorin by his letter dated 27.10.2011 to the following effect: ".With reference to your letter cited, I am to inform that, Thiru.S.Anthonymuthu, Wireman, Tuticorin Electricity Distribution Circle may be relieved from Board's Service immediately and he may be informed that he is deemed to have been retired with effect from 31.07.2004 after issuing necessary show cause notice based on the report furnished by you as detailed below:- (i) Date of Birth furnished by the employee at the time of appointment as Helper :

07. 02.1960 (ii) Date of Birth of his daughter based on the birth certificate issued by authorities :

30. 06.1954 (iii) If the individual got marriage at the age of 17 years, Date of Birth of the individual should be:

30. 06.1946 (iv) As per TNEB Service Regulation, Date of Birth of the individual is :

01. 07.1946 (v) Date of Retirement on superannuation :

30. 06.2004 A.N2 I request you to relive the individual immediately and furnish the action report to this office forthwith.". Based on the same, a Show Cause Notice was issued to the petitioner by the Superintending Engineer by his proceedings

dated 29.10.2011. Thereafter, finally, the impugned order was issued retiring the petitioner with effect from 30.06.2004. Challenging the said order, the petitioner is before this Court.

3. I have heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents and also perused the records carefully.

4. At the outset, when a specific query was made to the learned counsel for the petitioner as to whether the petitioner disputes the date of birth of his daughter Jansirani as is evident from the birth register, registered by the Sub-Registrar, Vilathikulam, the learned counsel for the petitioner is not in a position to dispute the same. Therefore, undoubtedly and indisputably, the date of birth of his daughter is 30.06.1964. Therefore, his claim that he was born on 07.02.1960 cannot be true at any stretch of imagination.

5. In an earlier enquiry, it was held that the school certificate produced by the petitioner was found to be bogus. Therefore, there can be no dispute that the date of birth of the petitioner is not 07.02.1960. In the impugned order, since the actual date of birth was not known, notionally the date of birth has been fixed as 30.06.1946, by treating the petitioner to have completed 18 years on the date of birth of his daughter ie. on 30.06.1964. For this method adopted also, I do not find any infirmity. It is on this basis, the petitioner has been allowed to retire from service on 30.06.2004 A.N. Though he actually continued in service till the impugned order was passed on 29.10.2011, he is deemed to have retired from service on 30.06.2004. Thus, the impugned order does not warrant interference by this Court at all.

6. The learned counsel for the petitioner would submit that without affording any opportunity, the impugned order has been passed. In this contention also, I do not find any force, for the simple reason that when the date of birth of his daughter is not in dispute, failure to afford any opportunity will not make any difference in the ultimate order to be passed. Allowing any further opportunity will be only an empty formality. Therefore, though it may be stated that sufficient opportunity was not afforded to the petitioner, on that ground the impugned order cannot be found fault with, because the date of birth of his daughter is not in dispute at all.

7. The learned counsel for the petitioner nextly submitted that by means of the impugned order dated 29.10.2011, the petitioner was actually relieved from service on 29.10.2011. In this regard, the apprehension of the petitioner is that the respondents may take further action to recover the salary paid for the period from 01.07.2004 to 29.10.2011. In my considered opinion, since due to the inaction on the part of the Tamil Nadu Electricity Board, the petitioner was allowed to work till 29.10.2011 and since he has contributed his physical as well as mental labour in the Tamil Nadu Electricity Board, no recovery of salary can be made for the period from 01.07.2004 to 29.10.2011. But, at the same time, I am of the view that for this period, the petitioner cannot claim arrears of pension. His pension will be calculated based on his last drawn salary as on 30.06.2004 and the same will be notionally calculated till 29.10.2011 and thereafter for the subsequent period his actual pension will be paid, if the petitioner is otherwise entitled for the same. This is the only relief, this Court could give to the petitioner.

8. In the result, the Writ Petition is disposed of in the following terms: (i) The impugned order retiring the petitioner from service with effect from 30.06.2004 is confirmed. (ii) It is directed that the salary paid to the petitioner for the period between 01.07.2004 and 29.10.2011 shall not be recovered from the petitioner. (iii) The pension and other monetary benefits of the petitioner on account of his retirement shall be calculated on the basis of the last drawn salary as on 30.06.2004. The petitioner shall not be entitled for arrears of pension for the period between 01.07.2004 to 29.10.2011 because he has received salary for this period. (iv) The petitioner shall be entitled for arrears of pension only from 01.11.2011, if the petitioner is otherwise entitled for the pension. S.NAGAMUTHU,J.

sj No costs. Consequently, connected M.P.(MD) No.1 of 2012 is also dismissed. 30.07.2014 Index: Yes Internet: Yes sj To 1.The Chief Engineer (Appointment), Tamil Nadu Electricity Board, Anna Salai, Chennai - 600 002. 2.The Superintending Engineer, Thoothukudi Electricity Distribution Circle, Thoothukudi. 3.The Assistant Engineer, O/o.The Assistant Engineer, DISTN/TEDC/TANGEDCO, Tamil Nadu Electricity Board, Soorangudi. W.P.(MD)No.843 of 2012 and M.P.(MD) No.1 of 2012