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Court : Chennai Madurai

Decided On : Jan-18-2017

Judge : R. Suresh Kumar

Appeal No. : WP. (MD) Nos. 2 & 8442 of 2010

Appellant : K. Pandi

Respondent : The Chief Engineer(Personal), Tamil Nadu Electricity Board, Anna Salai and Another

Judgement :

(Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 2nd Respondent in his proceedings TAMIL dated 23-04-2009 and quash the same as illegal and consequentially to direct the Respondents to give upgradation as Line Inspector w.e.f. 01-01-1994 along with consequential benefits thereon within the period that may be stipulated by this Honourable Court.)

1. The prayer in this writ petition is for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 2nd Respondent in his proceedings TAMIL dated 23-04-2009, quash the same

and consequently direct the respondents to give upgradation as Line Inspector with effect from 01-01-1994 along with consequential benefits within a time frame to be fixed by this Court.

2. The petitioner was appointed as Adhoc employee in the 2nd respondent circle during 1960. Thereafter, in the year 1967, the petitioner was made permanent. After working for several years in the department, he was appointed as Lineman in the 2nd respondent circle. The petitioner had rendered unblemished service for 33 years as a Lineman and on superannuation he retired on 30.09.1994.

3. During that point of time, there was a settlement between the Trade Union and the respondent department with the result, a board proceedings was issued in B.P(FB)No.120 dated 20.12.1994. The relevant portion of the said Board Proceedings is reproduced hereunder:-

"3. After careful consideration of the report of the committee and taking into account the view of the signatories to the settlement, the Board hereby orders:-

i) All the remaining posts of Lineman/Lineman equivalent in Distribution Circles rendered surplus consequent on the implementation of the revised work allocation and staff pattern be upgraded as Line Inspectors/Line Inspectors equivalent post with effect from 01.01.1994."

4. In view of the said settlement which has been reflected in the said B.P(FB)No.120 dated 20.12.1994, all the remaining Linemen have to be upgraded as Line Inspectors with effect from 01.01.1994. Therefore, since the petitioner also had worked till 30.09.1994, the benefit conferred to those Linemen working on 01.01.1994 for upgradation to the post of Line Inspector have to be extended to the petitioner. When the petitioner had requested the respondent department to give such benefits and accordingly fix his pay and other benefits, the same was turned down by the respondent department by the impugned order dated 23.04.2009. Challenging the same, the present writ petition has been filed.

5. Heard both sides.

6. The learned counsel for the petitioner would submit that though the petitioner retired from service on 30.09.1994 as Lineman on his superannuation, subsequently only B.P(FB)No.120 was issued on 20.12.1994. However, the benefit under Clause 3(i) of B.P(FB)No.120 as referred to above, was from 01.01.1994 and certainly, the said benefit has to be extended to the petitioner and therefore, rejecting the claim of the petitioner to extend the said benefit by giving upgradation to the petitioner as Line Inspector, is bad in law and directly against the said Clause of B.P(FB)No.120 dated 20.12.1994, issued by the respondent. Therefore, the impugned order is liable to be interfered with.

7. However, the learned standing counsel appearing for the respondents would contend that the petitioner had retired on 30.09.1994 and at the time of settlement reached between the Trade Union and the respondent department that is on 20.12.1994, the petitioner was not at all in service and only pursuant to the said settlement reached between the parties, B.P(FB)No.120 was issued on 20.12.1994 and well before the said date, the petitioner since has superannuated and retired, those benefits extended under Clause 3(i) of B.P(FB)No.120 cannot be extended to the petitioner, since he was no more an employee on the date of B.P(FB)No.120 and therefore, the order rejecting the said claim made by the petitioner through the impugned order is fully justifiable.

8. This Court has considered the said rival submission made by the learned counsel for both parties.

9. As has been extracted above, Clause 3(i) of B.P(FB)No.120 dated 20.12.1994 is very clear and unambiguous which states that all the remaining posts of Lineman/Lineman equivalent in Distribution Circles be upgraded as Line Inspectors with effect from 01.01.1994, which means who are all the remaining Linemen as on 01.01.1994 working in various distribution circles at the respondent department, are eligible to or entitled to get the benefit of one time upgradation as Line Inspector. Here in the case on hand, since the petitioner certainly was working as Lineman as on 01.01.1994 as he became superannuated only on 30.09.1994, he would be entitled to get the same benefit. Merely because the petitioner superannuated prior to the date of B.P(FB)No.120, dated 20.12.1994,

the benefits conferred on those who were working as Lineman as on 01.01.1994, cannot be denied to the petitioner and there is no scope for such denial if we have a cursory reading of Clause 3(i) of the said B.P(FB)No. 120, dated 20.12.1994.

10. Moreover, when the said request was made by the petitioner on 19.07.2006, the 2nd respondent by his letter No.30900/781 TAMIL dated 28.02.2007, has in fact having accepted the request of the petitioner, has sought for only a clarification or guideline from Government audit officer of the respondent Board. The relevant portion of the said letter dated 28.02.2007 of the 2nd respondent is reproduced for better appreciation of the issue:-

"1.9.94 TAMIL

11. When the 2nd respondent in the said letter has accepted the case of the petitioner and only sought for instruction or guideline from the higherups, the very same 2nd respondent when report is called for by the 1st respondent, being the head of the department seems to have given diagonally opposite view which is reflected in the impugned order. There is absolutely no plausible reason to take such a stand by the 2nd respondent to deny the benefit to the petitioner which is otherwise extended by virtue of Clause 3(i) of B.P(FB)No.120 and therefore, on this ground also, the impugned order is liable to be interfered with.

12. Therefore, this Court is of the considered view that the impugned order is totally unsustainable and is liable to be interfered with. Accordingly, the same is quashed. The respondents are directed to extend the benefit of giving upgradation as Line Inspector to the petitioner from 01.01.1994 and accordingly calculate all his service benefits including pay benefits, pay arrears, difference in increment as well as retirement benefits and after calculating the same, it shall be paid to the petitioner within a period of four weeks thereafter and at any rate, the needful as directed above shall be done by the respondents within a period of eight weeks from the date of receipt of a copy of this order.

With the above direction, this Writ Petition is allowed. No costs.

Consequently, M.P(MD)No.2 of 2010 is closed.

