

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 28-10-2015

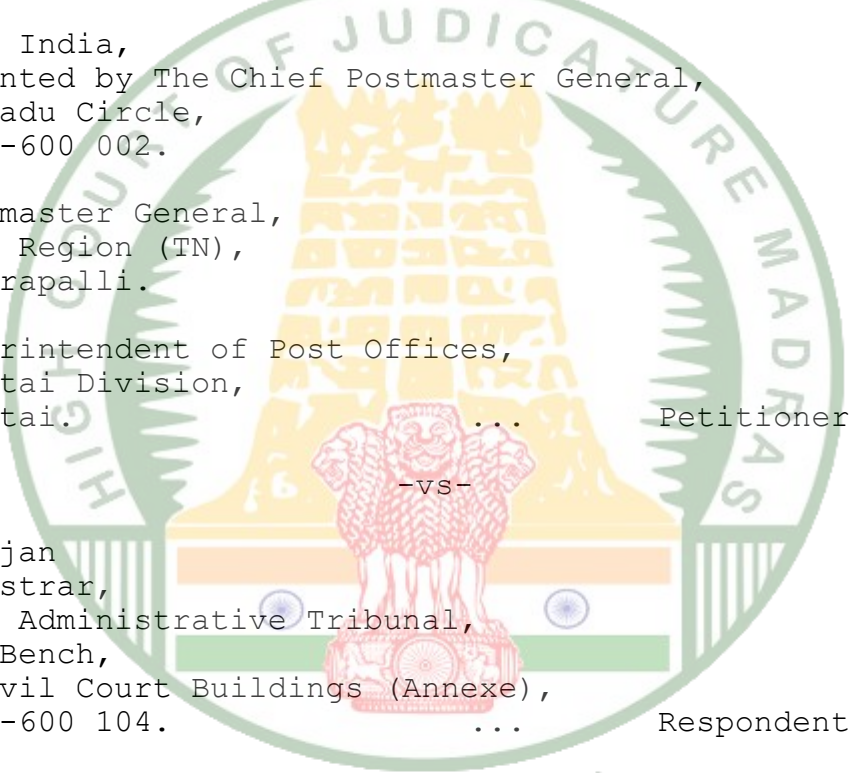
CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

AND

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

W.P.No.22850 OF 2015

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- 1.Union of India,
represented by The Chief Postmaster General,
Tamil Nadu Circle,
Chennai-600 002.
- 2.The Postmaster General,
Central Region (TN),
Tiruchirapalli.
- 3.The Superintendent of Post Offices,
Pudukottai Division,
Pudukottai. Petitioners
- vs-
- 1.K.Nagarajan
2.The Registrar,
Central Administrative Tribunal,
Madras Bench,
City Civil Court Buildings (Annexe),
Chennai-600 104. ... Respondents

Writ Petition under Article 226 of the Constitution of India, praying for issuance of writ of certiorari, to call for the records of the second respondent in O.A.No.1490 of 2010, dated 11.07.2012.

For petitioners : Mr.V.P.Sengottuvel,
Central Govt.Standing Counsel.

For respondent 1 : Mr.R.Malaichamy

O R D E R

Being aggrieved by the order made in O.A.No.1490 of 2010,

dated 11.07.2012, wherein, directions have been issued by the Central Administrative Tribunal, Madras Bench, to the writ petitioners, to regularise the services of the first respondent, as Postman, from the date of his initial appointment, with protection of seniority, on par with his juniors, this Writ Petition is filed.

2. Facts, leading to the filing of the Writ Petition from the material on record and the impugned order are, that the father of the first respondent, a Postman in Valayapatti Sub-Post Office, retired from service on medical grounds on 07.11.1996. First respondent, son, applied for employment as Postman on compassionate grounds. He could not be provided employment assistance, as per DOP&T letter No.14014/6/95-Estt (D), dated 26.09.1995, communicated vide letter, dated 11.12.1995. As per the said proceedings, the total number of compassionate appointment was restricted to 5% of the direct recruitment vacancies in a year. Case of the respondent is that subsequently, it has been clarified that the vacancies to be filled up by extending employment assistance on compassionate grounds will also be within the overall vacancies approved by the Screening Committee in the Annual District Recruitment Plan. The further case of the writ petitioners is that the name of the first respondent was approved by the Circle Selection Committee and kept in the waiting list along with similar candidates, for compassionate appointment. He was informed that it would take some time to get appointment, as there were many approved candidates in the waiting list, for appointment and, in the meanwhile, his services would be utilised in the leave/short term vacancies of Postman in Pudukottai Division. Accordingly, he was given training for the post of Postman in Pudukottai Head Office, as well as in the Office of the Superintendent of Post Offices, Pudukottai Division, Pudukottai, the third petitioner herein. From 01.06.1999 to 10.06.1999, he was allotted the work of Postman, as an outsider. As vacancies were not available in Pudukottai Division, he was engaged in leave vacancy as Postman, at various places.

3. Before the Tribunal, the writ petitioners have submitted that the Government of India issued an Office Memorandum vide DOP&T letter No.4201214/200-Estt (D), dated 24.11.2000, communicated vide Postal Directorate letter No.24-1/99-SPB-I, dated 08.02.2001, and directions were issued to discontinue the maintenance of waiting list of approved candidates. However, as a special consideration, in accordance with the Directorate's letter No.37-16/2001-SPB-I, dated 25.07.2001, and vide letter dated 09.05.2002 of the Superintendent of Post Offices, Pudukottai Division, Pudukottai, the first respondent was offered GDS posts (ED posts). Writ petitioners have further contended that though initially vide letter dated 17.05.2002 the first respondent expressed his willingness to accept the GDS

post, subsequently, vide letter, dated 03.02.2003, he refused to accept the same.

4. Further case of the writ petitioners is that, in the meantime, persons included in the approved list filed Original Application, seeking regular absorption, in the Department. Arising out of the said O.A., the Hon'ble Supreme Court, in S.L.P.No.2976 of 2008, dated 30.07.2010, directed the Department to regularise all the 202 respondents therein, who were working in the Department, as on 27.10.2009. The Hon'ble Apex Court has further made it clear that the Tribunal/High Court shall not treat the abovesaid order, as a precedent.

5. It is the grievance of the writ petitioners that, placing reliance on the order made in O.A.NO.185 of 2011, dated 30.11.2011, the Central Administrative Tribunal, Madras Bench, has issued directions to regularise the services of the first respondent with effect from the date of initial appointment. Added further, Mr.V.P.Sengottuvel, learned Central Government Standing Counsel, appearing for the writ petitioners, submitted that the procedure of maintaining the waiting list for employment assistance has been discontinued long back. On the basis of the averments made in the affidavit, filed in support of the writ petition and documents, the learned Standing Counsel further submitted that the father of the respondent retired on medical grounds, with effect from 07.11.1996, and after his retirement, the first respondent applied for employment assistance on compassionate grounds, and considering the indigent circumstances, the name of the first respondent was approved, for appointment under relaxation of normal recruitment rules, vide letter, dated 06.05.1999. Thereafter, he was given training for the post of Postman at Pudukottai Head Post Office, as well as in the Office of the Superintendent of Post Offices, Pudukottai Division, from 01.06.1999 to 10.06.1999, and was asked to work as Postman against clear vacancies. From 1999, the first respondent has been allotted work in various places.

6. Learned Standing Counsel also submitted that some of the approved candidates approached the Hon'ble Central Administrative Tribunal, Madras Bench, for regularisation of their services. The Tribunal allowed the Original Application. Being aggrieved, Writ Petition Nos.38990 of 2002, 58153 of 2002 etc., were filed before this Court and, vide order, dated 13.06.2007, they were dismissed. Thereafter, the Department filed S.L.Ps., and the same were dismissed on 30.07.2010. According to the learned counsel for the writ petitioners, the sole ground for allowing the particular Original Application is the order made in the earlier O.A.No.185 of 2011, dated 30.11.2011, and the Tribunal failed to consider the objections of the writ petitioners in proper perspective. For the abovesaid

reasons, he prayed to set aside the order impugned in this Writ Petition.

7. Per contra, Mr.R.Malaichamy, learned counsel for the first respondent submitted that without any justification, the Department submitted list of only 202 approved candidates and failed to include the names of the other approved candidates, for regular appointment. According to the learned counsel, the first respondent is one of the approved candidates. It is also his submission that had the Department rejected the request of the first respondent like others, he would have also approached the Tribunal and got the remedy like others in time, and, since the writ petitioners did not reject the request of the first respondent and allowed him to act as Postman all along, there was no occasion for him, to approach the Tribunal, along with others. However, as the first respondent had worked for a long time, he has to be regularised like others. He has prayed to sustain the order of the Tribunal.

8. Heard the learned counsel for the parties and perused the material on record.

9. Material on record discloses that vide proceedings, dated 21.04.1999, a Circle Selection Committee, which met between 10.11.1998 and 13.11.1998, considered the case of compassionate appointment under relaxation of recruitment rules and decided to provide training and keep the candidates for utilisation. The first respondent is one of the candidates, included in the said proceedings of the Assistant Director (Recruitment), on behalf of the Chief Postmaster General, Tamil Nadu Circle, Chennai.

10. Material on record further discloses that after the disposal of the SLPs., some of the Postmen, working in the Postal Department, have filed Original Applications, before the Central Administrative Tribunal, Madras Bench. One such Original Application filed before the Central Administrative Tribunal, Madras Bench, is O.A.No.1311 of 2010, and, after considering the rival submissions therein, vide order, dated 30.11.2012, the Tribunal directed regularisation of the first respondent therein as Postman, against a vacancy, with protection of seniority with effect from 17.05.1995, within four weeks from the date of receipt of a copy of the said order. Being aggrieved, the Union of India, represented by Chief Postmaster General, Tamil Nadu Circle, Chennai, have filed W.P.No.24535 of 2013 on the file of this Court. Though writ petitioners therein have contended that concession was given only to 202 candidates, who were parties in the SLP before the Hon'ble Supreme Court, as a one time measure, and that the same cannot be taken as a precedent for regularisation/absorption of the first respondent therein, and further contended that the Hon'ble Supreme Court, while passing the final orders in a batch

of SLPs., has observed that the order passed by the Apex Court shall not be treated as a precedent, after considering a catena of decisions, as to whether persons equally placed should be treated alike without any discrimination, and whether the writ petitioner therein has made out a case, a Hon'ble Division Bench of this Court, in W.P.No.24535 of 2013, vide order, dated 30.09.2013, held that there was no merit in the said writ petition, and, accordingly, dismissed the same. Some of the decisions considered by the Hon'ble Division Bench in the said W.P.No.24535 of 2013, dated 30.09.2013, are worth reproduction :

"9. The issue as to whether equally placed persons should be treated alike without any discrimination even in service matter is no longer res integra. The following decisions can be cited to the said proposition:

(a) In Prem Chand Somchand Shah v. Union of India, (1991) 2 SCC 48, the Hon'ble Supreme Court in paragraph 8 held thus,

"8. As regards the right to equality guaranteed under Article 14 the position is well settled that the said right ensures equality amongst equals and its aim is to protect persons similarly placed against discriminatory treatment. It means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Conversely discrimination may result if persons dissimilarly situate are treated equally. Even amongst persons similarly situate differential treatment would be permissible between one class and the other. In that event it is necessary that the differential treatment should be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and that differentia must have a rational relation to the object sought to be achieved by the statute in question."

(b) In the decision reported in STATE OF KARNATAKA Vs. N.PARAMESHWARAPPA, 2003 (12) SCC 192, in paragraph 8, it is held thus:

"8..... we do not find any reasonable justification to confine the relief to only such of the teachers who approached the court and having regard to the fact that relief

related to the revision of scales of pay, every one of that class of teachers who approached would be entitled to the benefit, notwithstanding that they have not approached the court. We are in equal agreement with the Division Bench in denying the payment of interest at compounded rates which, in our view, cannot be justified at all on the facts and circumstances of the case wherein a serious and genuine doubt existed about the applicability of the government order dated 30-3-1990, as raised in the proceedings."

(c) In GOVIND RAM PUROHIT Vs. JAGJIWAN CHANDRA 1999 SCC (L & S) 788, in para 3, it has been held thus:

"3. It was lastly contended by the learned counsel for the appellants that whereas the petition had been filed by only Respondent 1, the High Court while finally concluding the matter has given a direction to promote all those who were senior to the appellants even though they were not parties to the petition. Once the High Court had placed a particular interpretation on the Rules, the benefit of that interpretation had to go to all those who qualified under the seniority-cum-merit rule. There was no point in waiting for each and every person to file a petition. Therefore, we do not see any reason why we should entertain such a technical plea when the High Court has done substantial justice to all concerned."

(Emphasis Supplied)

The above referred Supreme Court decisions were followed by one of us (NPVJ) in 2006(2) MLJ 572 (N.S.BALASUBRMANIAN V. FOOD CORPORATION OF INDIA) for extending the benefits even after voluntary retirement. The said order was challenged in W.A.No.956/2006 and the same was dismissed on 30.10.2006 and S.L.P.(C) No.677/2007 filed against the Division Bench order was also dismissed by the Hon'ble Supreme Court on 23.04.2007.

(d) In the decision reported in 2011 (5) SCC 553 (RATHY SHYAM V. STATE OF UTTAR PRADESH) the Supreme Court held that the policy of pick and choose in acquiring some parcels of land while leaving many other parcels of lands under

Land Acquisition Act is discriminatory and violation of Article 14 of the Constitution of India.

(e) In the decision reported in 2010 (2) CTC 336 (SC) (HARI RAM V. STATE OF HARIYANA) the Supreme Court held that if the Courts are not correcting the wrong action of the Government it may leave citizen with the belief that citizen is right in contacting right persons in the Government as if judicial proceedings are not efficacious.

(f) The principle stated in the above cited decision in Hari Ram's case was reiterated in the recent decision of the Supreme Court reported in 2013 (10) Scale 67 (Sham Lal v. State of Punjab) (para 21 & 22).

(g) In the decision reported in 2013 (8) Scale 74 : (2013) 7 SCC 595 (State of U.P. v. Dayanand Chakrawarty) relying the decision reported in (1991) 2 SCC 48 (supra) the Hon'ble Supreme Court held that there cannot be any discrimination in treating equally placed persons on same footing, for all purposes.

(h) The Division Bench of this Court in the decision reported in 2011 (5) CTC 503 (TAMIL NADU HOUSING BOARD V. UMA MAHESWARI RAMASWAMY) held that there must not be discrimination in land acquisition proceedings. Special Leave to Appeal CC Nos.6063-6066 of 2012 filed against the said judgment were dismissed by the Hon'ble Supreme Court on 13.4.2012."

11. Material on record further discloses that in compliance of the order made in W.P.No.24535 of 2013, dated 30.09.2013, on behalf of the Chief Postmaster General, Tamil Nadu Circle, Chennai, the Assistant Chief Postmaster General (Recruitment) has issued proceedings, dated 28.03.2014, regularising Mr.S.Subramani, as a Postman, from the date of his initial appointment.

12. Material on record further discloses that in 2014, about 88 similarly placed persons have filed O.A.No.1072 of 2012, praying for directions to regularise their services. After considering the rival contentions, the Central Administrative Tribunal, Madras Bench, has passed orders, dated 25.10.2013, to regularise their services in the posts held by them, with effect from the date of their initial appointment. Not satisfied with the said order, the Secretary, Department of Posts, New Delhi, Dak Bhavan, New Delhi; the Director (Staff), Department of Posts, Ministry of Communications and I.T., Dak Bhavan, New

Delhi; and the Chief Postmaster General, Tamil Nadu Circle, Chennai, have filed W.P.No.16041 of 2014. Though objections similar to what is stated in the present writ petition have been raised, a Hon'ble Division Bench of this Court, vide order, dated 20.06.2014, has rejected the objections of the Government and, ultimately, at paragraph No.10, ordered as follows :

"10. In view of the above pronouncements, we hold that similarly placed persons are bound to be treated equally without discrimination, which is a fundamental right guaranteed under Article 14 of the Constitution of India. The Central Administrative Tribunal rightly followed the said judgment and allowed the the Original Application. Therefore, we are not able to find any merit to entertain this Writ Petition and the same is dismissed."

13. Material on record further discloses that pursuant to the order made in W.P.No.16041 of 2014, dated 20.06.2014, the Assistant Postmaster General (Recruitment), on behalf of Chief Postmaster General, Tamil Nadu Circle, Chennai, has issued orders, dated 17.09.2014, regularising the applicants, covered under the orders of this Court. Material on record further discloses that the SLP, preferred against the order made in W.P.No.16041 of 2014, dated 20.06.2014, has also been dismissed by the Hon'ble Supreme Court.

14. In two other writ petitions, namely, W.P.No.23518 of 2014, dated 06.01.2015, and W.P.No.31222 of 2014, dated 06.01.2015, directions have been issued to the authorities therein, to regularise the services of the respondents therein. Though there are innumerable orders passed by the Hon'ble Division Benches of this Court, approving the decision of the Central Administrative Tribunal, Madras Bench, in the matter of regularisation of the respondents therein, whose bread-winners have either retired or died in harness, repeatedly, the very same objections have been taken by the writ petitioners. Perusal of the recent order, dated 12.06.2015, of the Assistant Chief Accounts Officer, Administration, Office of the General Manager (PA&F), Tamil Nadu Circle, Chennai, shows that the orders made in W.P.Nos.24535 of 2013, and 16041 of 2014, have been duly implemented, by regularising the services of the respondent therein. Having regard to the sequence of events from 1999 and the periodical orders of this Court we are of the considered view that if there are clear vacancies, the writ petitioners should consider the request of the dependants, seeking employment assistance on compassionate grounds, with a pragmatic view, extend compassion and regularise their services, instead of driving them to Courts/Tribunals. Scheme of appointment on compassionate grounds is to tide over the

financial constraint. By prolonging regular appointment, the department should not keep them in penury. It is also to be noted that once the objections of the department are considered and rejected by a detailed order, relying on the decisions of the Hon'ble Supreme Court, the same has to be respected and followed in similar cases, instead of repeating the same objections in every case. It is not for the Court to reiterate the same orders, again and again. From the material on record, it could be deduced that every time an order is passed by this Court, it is implemented and orders of regularisation are issued, from which, it could be inferred that the authorities do not regularise the services of those engaged on compassionate grounds, on their own, instead, drive them to Courts/Tribunals. Sudden demise or medical grounds of the bread-winners, is the cause for seeking employment assistance on compassionate grounds, and the Government have evolved a scheme, to tide over the financial constraint of such families. Engaging a person continuously for many years in the same status, and after long engagement, discontinuing his services or take a decision not to regularise his services, would be against the very basic structure of our Constitution. At this point, we wish to remind to ourselves the Preamble of the Constitution, which reads as follows :

"WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:
JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity;

and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION."

15. Keeping in mind the objective of the Constitution of India, those who have the authority under law, to achieve the constitutional goals, should be more proactive and their approach to be pragmatic. A person would enter the service, on

attaining the age of 18 years, and after long number of years, if he has to be disengaged, where would he go ? One can also reasonably presume, with the limited source of income, he would have entered into the second phase of his life, marriage, children and family. By the time the authorities take a decision to disengage or not to regularise his services, he would be overaged for any appointment. All along, he would be serving the department with a fond hope that, one day, the department would consider his case. It is also to be noted that, the claim of a person seeking employment assistance on compassionate grounds can only be against a post in the lower hierarchy. If the authorities enjoined with a duty to consider such cases, with compassion, failed to exercise the same, the very object is lost. In the light of the above decisions and discussion, we sincerely hope that, in future, the authorities would take a suitable decision.

16. The word "Justice" in the Preamble, refers to three varying aspects - social, economic and political -, which are achieved through the provisions of Fundamental Rights and Directive Principles of State Policy. Government have evolved a policy of extending employment assistance on compassionate grounds. Keeping in mind the basic principles of the Constitution of India, the authorities should consider as to how a person engaged in a lower post can expect to achieve social and economic justice, if he has to be disengaged or not regularised in the post, even after so many years. From the long engagement, it could be further inferred, that there is a continuous need for engagement.

17. In the light of what is considered and discussed supra, the contentions of the writ petitioners, opposing regularisation of the services of the first respondent, cannot be countenanced. The first respondent is entitled to the relief prayed for in the Original Application, before the Central Administrative Tribunal, Madras Bench. Writ Petition is dismissed. No costs. Consequently, the connected M.P.No.1 of 2015 is closed. The writ petitioners are directed to comply with the directions issued by the Central Administrative Tribunal, within a period of four weeks from the date of receipt of a copy of this order.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

dixit

To

The Registrar,
Central Administrative Tribunal,
City Civil Court Buildings (Annexe),
Chennai-600 104.

+1 cc to Mr.V.P.Sengottuvel, Advocate, sr.58960

+1 cc to Mr.R.Malaichamy, Advocate, sr.58723

W.P.No.22850 OF 2015

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