

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2015

CORAM

THE HONOURABLE MR. JUSTICE N. PAUL VASANTHAKUMAR
AND
THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

W.P.No.29946 of 2014
and
M.P.No.1 of 2014

- 1.Union of India,
rep. by Director General,
Department of Post,
Dak Bhavan,
New Delhi-110 001.
 - 2.The Chief Post Master General,
Tamilnadu Circle,
Anna Salai,
Chennai-600 002.
 - 3.The Post Master General,
Central Region,
Tiruchirapalli-620 001.
 - 4.The General Manager (Postal Accounts & Finance),
Tamilnadu Circle,
Ethiraj Salai,
Chennai-600 008.
 - 5.The Senior Superintendent of Post Office,
Thanjavur Division,
Thanjavur-613 001.
- ... Petitioners

Vs.

- 1.M.Ilangopathy
 - 2.The Registrar,
Central Administrative Tribunal,
High Court Campus,
Chennai-600 104.
- ... Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying to issue writ of certiorari calling for the records relating to the order dated 10.6.2014 of the Central Administrative Tribunal, Chennai Bench in Original Application No.1279 of 2013 and quash the same.

For Petitioners

: Mr.A.S.Chakravarthy

ORDER

(Order of the Court was made by N.Paul Vasanthakumar, J.)

Heard Mr.A.S.Chakravarthy, learned counsel appearing for the petitioners.

2. This writ petition is filed challenging the order dated 10.6.2014 passed by the Central Administrative Tribunal, Madras Bench in Original Application No.1279 of 2013, wherein the 1st respondent has prayed to set aside the order dated 21.2.2013 passed by the 3rd petitioner and the order dated 22.4.2013 passed by the 5th petitioner and direct the petitioners to grant pension taking into account 1st respondent's service of 9 years 7 months and 23 days as regular Postman along with 31 years as Gramin Dak Sevak (for short "GDS") for the purpose of computing his qualifying service and grant other consequential benefits.

3. The case of 1st respondent before the Central Administrative Tribunal was that he entered into the service as Extra Delivery Agent on 25.2.1972 and subsequently, transferred and posted as Branch Postmaster (now Gramin Dak Sevak BPM), Koopachikottai Branch Office under Paravakottai Sub Post Office on 9.5.1994. After the petitioner rendered service for 31 years and 12 days as GDS, he was regularly promoted as Postman as per seniority and posted as Postman at Vaduvur Sub Post Office under Mannargudi HOP and he joined in the said station on 8.3.2003 and retired from service on 31.10.2012, after attaining the age of superannuation. According to the 1st respondent, he had rendered 9 years 7 months and 23 days of qualifying service as Postman and combined with 31 years of service as GDS, the 1st respondent is entitled to get pension.

4. The Central Administrative Tribunal has set aside the order of the 5th petitioner dated 22.4.2013, thereby allowing the Original Application and remitted the matter back to the petitioners to consider sanction of minimum pension and other pensionary dues taking into account the shortfall period of service from the ED employment for the purpose of determination of qualifying service of 10 years and pay him the pension. Aggrieved over the said order, the petitioners have filed the writ petition.

5. The contention of petitioners is that even though the 1st respondent had completed 31 years of service as GDS, it cannot be counted for pension as there is no rule in force and as per Note II (v) (vi) under Rule 3 of GDS (Conduct and Employment) Rules, 2001, the Gramin Dak Sevaks are outside the Civil Service of the Union and they shall not claim to be on par with the servant of the Government. According to petitioners, as per Rule 6 of GDS (Conduct and Engagement) Rules, 2001,

the Gramin Dak Sevaks shall not be entitled to any pension and therefore, the service rendered by the 1st respondent as GDS cannot be taken into account for pension purpose and as per Rule 49 (2) (b) of Central Civil Services (Pension) Rules, 1972, a Government servant should complete 10 years of qualifying service.

6. Section 49(3) of the Central Civil Services (Pension) Rules, 1972 reads thus:-

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

7. Similar issue arose with respect to the calculation of 10 years of service under Rule 49 (3) of Central Civil Services (Pension) Rules, 1972 before a Division Bench of this Court in W.P.No.45465 of 2002, dated 4.10.2007. Even though a person was having a regular service of 9 years 3 months and 23 days, considering the E.D. Staff service of 29 years, this Court directed grant of pension treating that the person has completed 10 years of qualifying service. The said order was challenged before the Hon'ble Supreme Court in SLP.No.13829 of 2008, which was also dismissed on 17.10.2008 and the said order was implemented by order dated 9.10.2009.

8. Again in W.P.No.22496 of 2009, dated 14.2.2013, a similar issue was considered and relief was granted, even though the said person was not having 10 years of pensionable service. Again in W.P.No.22833 of 2010, dated 10.11.2010, a similar issue was considered by a Division Bench of this Court directing the respondents therein to take into consideration the service of 9 years, 6 months and 13 days rendered as qualifying service for pension, treating it as 10 years service.

9. The Division Bench of Karnataka High Court in W.P.No.72872 of 2012, dated 25.3.2013 also passed a similar order. The above said orders have been followed by the Division Bench of this Court (of which one of us [NPVJ] was a member) in W.P.No.29896 of 2013 by order dated 6.12.2013. The said order was also confirmed by the Hon'ble Supreme Court.

10. Insofar as the State Government employees are concerned, Rule 43 (2)(a)(3) of the Tamil Nadu Pension Rules, 1978 states that in calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated as a completed one half year and reckoned as qualifying service. In this case, the 1st respondent's pensionable service comes to 9 years 6 months and 23 days. If 3 months period is taken as half year, 6 months should be treated as full year.

11. Similar issue was considered by this Court in W.P.No.4071 of 2008, dated 11.9.2012 by following the judgment of this Court in Writ Appeal No.27 of 2012, dated 13.2.2012, which was affirmed by the Hon'ble Supreme Court in SLP.No.16119 of 2012, by order dated 10.5.2012.

12. Similar is the view taken by the Division Bench of this Court in the decision reported in 2014 (3) LLN 445 (The Secretary to Government, Planning, Development & Special Initiatives Department, Secretariat, Fort St. George, Chennai - 9 and another v. R.Baskaradoss), in which one of us [NPVJ] was a member.

13. The Hon'ble Supreme Court considered similar issue in respect of an employee of the State Bank of Patiala with reference to Chapter IV Regulations 14 and 18 of the State Bank of Patiala (Employees) Pension Regulations, 1995 in the decision reported in (2014) 3 LLN 17 (SC) (State Bank of Patiala Vs. Pritam Singh Bedi & Others), wherein the Supreme Court held that if there is a regulation to count six months and more period as one completed year as pensionable service and the employee concerned having minimum pensionable service, he is entitled to get pension.

14. Following the above said decision of the Hon'ble Supreme Court reported in (2014) 3 LLN 17 (SC) (State Bank of Patiala Vs. Pritam Singh Bedi & Others), the Division Bench of this Court in W.A.No.906 of 2013, dated 20.10.2014 held that the period of 9 years, 6 months and 23 days should be taken as 10 years pensionable service for the purpose of grant of pension.

15. In the light of the above said judgments and having regard to the fact that the total pensionable service as per the averments of the petitioners in this case itself is 9 years 7 months and 23 days, the said period should be taken as 10 years pensionable service for the purpose of grant of pension. Since the 1st respondent has retired from service on 31.10.2012 on attaining the age of superannuation, the petitioners are bound to sanction pension from 1.11.2012. The 1st respondent is not entitled to get any interest from 1.11.2012, as his eligibility is settled only now.

16. In the result, the writ petition is dismissed. However, direction is issued to the petitioners to sanction and pay eligible pension to the 1st respondent, treating that the 1st respondent had completed 10 years of pensionable service as on 31.10.2012. The petitioners are also directed to pay the arrears of pension from 1.11.2012, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, M.P.No.1 of 2014 is closed.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Director General,
Department of Post,
Dak Bhavan,
New Delhi-110 001.
- 2.The Chief Post Master General,
Tamilnadu Circle,
Anna Salai,
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- 4.The General Manager (Postal Accounts & Finance),
Tamilnadu Circle,
Ethiraj Salai,
Chennai-600 008.
- 5.The Senior Superintendent of Post Office,
Thanjavur Division,
Thanjavur-613 001.
- 6.The Registrar,
Central Administrative Tribunal,
High Court Campus,
Chennai-600 104.

+1cc to Mr.A.S.Chakravarthy, Advocate Sr 359

SR(CO)
km/22.1.

W.P.No.29946 of 2014

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