

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15614 of 2014

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1. Union of India through the Secretary Department of Posts Dak Bhawan, New Delhi.
 2. The Chief Post Master General, Bihar Circle, Patna.
 3. The Superintendent of Post Office Bhojpur Division, Ara.

.... Petitioner/s

Versus

Mohan Prasad, son of Late Baleshwar Prasad, resident of village Masurhi, Police Station Jagdishpur, District - Bhojpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar, A.S.G.
Mr. Rakesh Kumar Sinha, C.G.C.
For the Respondent/s : Mr. Maya Shankar Mishra, Advocate.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 18-04-2016

Heard learned counsel for the petitioners and the respondent.

2. The challenge in the present writ application is to an order dated 22nd February, 2013 passed by the Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as the “Tribunal”) in an Original Application No. 733 of 2011, whereby the original application filed by the respondent herein was allowed directing the petitioners to grant pension to the respondent after taking his service as minimum qualifying service for pension or by adding short fall from Extra Departmental Delivery Agent service within three months.

3. The respondent was working as Extra Departmental Delivery Agent from 10.11.1969. He was promoted/ appointed to Group-D service on 29th April 1998. He retired on attaining the age of superannuation on 31st July 2007 i.e., after 09 years 02 months and 19 days of service against Group-D post and after 29 years against an Extra Departmental Delivery Agent post.

4. The respondent claims benefit of pension relying upon the order passed in the case of **Secretary Department of Posts and Ors. v. M.R. Palani Swamy** in **SLP (Civil) CC 13829 of 2008**. The learned Tribunal allowed the original application holding that the case of the applicant is identical to an earlier order passed in **Kant Lal Mandal vs. Union of India and Ors.** in O.A. No. 16 of 2007 which still holds the field after **M.R.Palani Swamy** (supra) and is not reversed.

5. Learned counsel for the petitioners refers to an order passed by the Hon'ble Supreme Court in **Civil Appeal Nos. 13675-13676 of 2015 - Union of India and Ors. vs. The Registrar and Anr.**, wherein in identical circumstances, the benefit of pension was declined holding that the circular of Department of Personnel and Training issued in the year 1991 is not applicable to the Extra Departmental Delivery Agents.

6. In the aforesaid case, the respondent N.S.Poonusamy



worked as an Extra Departmental Delivery Agent in the Postal Department from the year 1968 to 1993. His service was regularized with effect from 01.04.1993. He retired on 31.05.2002. The Hon'ble Supreme Court recorded that Extra Departmental Delivery Agent is required to render between three to five hours of service every day and that their services were engaged to reach out to the addresses in far flung villages in the country where establishment and maintenance of a regular post office is not a viable proposition. The Hon'ble Supreme Court found that the Department of Personnel and Training Circular of 1991 is applicable to full time casual employees and not to part time casual employees such as Extra Departmental Delivery Agents. It was also observed that the matter of grant of pension pertains to policy and involves financial implications. Though, the Hon'ble Supreme Court has not interfered with the pension granted to the respondent therein, but the principles of law were laid down.

7. In view of the aforesaid judgment of the Hon'ble Supreme Court, the respondent herein is not entitled to pension as he has not completed minimum service of ten years.

8. Faced with this situation, learned counsel for the respondent argued that the Departmental Promotion Committee was constituted after delay and therefore, the period of delay should be added in the qualifying service in the light of the judgment of this

Court in CWJC No. 13481 of 2013.

9. We do not find any merit in the said argument. Firstly, it is not the case of the respondent before the Tribunal that the Departmental Promotion Committee was delayed intentionally so as to harm the interest to the applicant. Still further, *prima facie*, we have reservation with the view taken that delay in convening the meeting of the Departmental Promotion Committee can be counted for calculating the qualifying service for the purposes of pension. But in the present no such foundation was laid, therefore, we do not wish to examine such argument any further.

10. In view of the said fact, the present writ application is allowed. The order passed by the Tribunal is set aside and the Original Application stands dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Sujit/-P. Kumar
N.A.F.R.

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