

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2016

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE N.AUTHINATHAN

Writ Petition No.13500 of 2016

1.O.Ramachandran
2.Jawahar Palayanandam
3.D.Ponnusamy
4.Balamirthalingam
5.C.Duraipandian Petitioners

vs.

1.Union of India
Rep. by the Secretary (Posts)
Director General India Post
& Chairman Postal Services Board
Dak Bhavan
New Delhi - 110 001
2.The Chief Post Master General
Southern Region
Madurai
3.The Post Master General
Southern Region
Madurai
4.The Senior Superintendent of Post offices
Kanyakumari Division
Nagarcoil - 629 001
5.The Registrar,
Central Administrative Tribunal
High Court Campus, Chennai Respondents

WRIT Petition filed under Article 226 of the Constitution of India, for a writ of certiorarified mandamus to call for the records of the 5th respondent, quash the order dated 28.4.2014 of the Central Administrative Tribunal, Chennai passed in O.A.No.785 of 2011 while declaring Rule 6 of the Department of Posts, Gramin Dak Sevak (Conduct & Employment) Rules, 2001 as unconstitutional, null and void as being violative of Article 14, 16 and 21 of the Constitution of India and consequently direct the respondents 1 to 4 to grant pension to the petitioners as per the rules relating to pension applicable to the employees of the Department of Post, the Government of India.

For Petitioner : Mr.K.Ravi Ananthapadmanabhan

For Respondents: Mr.J.Madanagopal Rao, for R1 to R4

ORDER

(delivered by S.MANIKUMAR, J)

Challenge in this writ petition is to an order of the Central Administrative Tribunal, Madras dated 28.4.2014 made in O.A.No.785 of 2011, by which, the Tribunal has declined to declare Rule 6 of the Department of Posts, Gramin Dak Sevak (Conduct & Employment) Rules, 2001, as unconstitutional and violative of Articles 14, 16 and 21 of the Constitution of India, and consequently, declined to direct the respondents to grant pension to the petitioners, as per the rules relating to pension, applicable to the employees of the Department of Posts, Government of India and for further orders.

2. At the time of filing of the original application before the Central Administrative Tribunal, Madras, the first petitioner had already retired. The rest were in service. According to the petitioners, they were appointed as Extra Departmental Agents, presently, known as, Gramin Dak Sevaks. Earlier, their services were governed by administrative instructions called, Postal & Telegraphic Extra Departmental Agents (Conduct and Service) Rules, 1964 and with effect from 24.04.2001, they are governed by the Department of Posts, Gramin Dak Sevak (Conduct and Employment) Rules 2001. According to them, the new rules are applicable to eight categories of Gramin Dak Sevaks, in the Department of Posts. Rural Post Offices are manned by Gramin Dak Sevak Branch Post Masters, who work on a part time basis, ranging from 3 hours to 5 hours. They cater to the postal needs of rural community of the country.

3. Gramin Dak Sevaks are employed as GDS Sub Postmaster/Branch Postmasters/Mail Deliverers, Mail Carriers and Mail Packers. The minimum educational qualification for GDS SPM/BPM, is Matric class. For other categories, it is middle standard pass. The minimum age limit for employment as EDA is 18 years and he can be retained in service upto the age of 65 years. Though the post of Extra Departmental Agent (EDA), presently known as Gramin Dak Sevak, is a part time post, the Hon'ble Apex Court in Superintendent of Post Offices vs. P.K.Rajamma and ors. reported in 1977 AIR 1677 has held that it is a civil post.

4. It is the contention of the petitioners that when the service conditions applicable to Group 'D' cadre, namely, Postman and Postal Assistant are similar and when Group 'D' employees are provided with pension, gratuity, HRA, leave, medical allowances etc. the writ petitioners, who are Gramin Dak Sevaks are not given pension. Rule 6 of the Department of

Posts, GDS Rules, 2001 states that "the sevaks shall not be entitled to any pension." On the above facts, original application No.785/2011 has been filed before the Central Administrative Tribunal, Madras, to declare Rule 6 of the Department of Posts, Gramin Dak (Conduct and Employment) Rules, 2001 as unconstitutional and for the reliefs stated supra. At this juncture, it is seen that, Rules 2001, have been substituted by Gramin Dak Sevak (Conduct and Engagement) Rules, 2011.

5. Before the Tribunal, the respondents, in their counter affidavit, have contended that, as per Rule 3-A of Gramin Dak Sevaks (Conduct and Engagement) rules, 2001:

- i) A sevak shall not be required to perform duty beyond a maximum period of 5 hours in a day;
- ii) A sevak shall not be retained beyond 65 years of age;
- iii) A sevak shall have to give an undertaking that he has other source of income besides the allowances paid or to be paid by the Government for adequate means of livelihood for himself and his family;
- iv) A sevak can be transferred from one post/unit to another post/unit in public interest;
- v) A sevak shall be outside the Civil Service of the Union;
- vi) A sevak shall not claim to be at par with the Central Government employees;
- vii) Residence in Post village/delivery jurisdiction of the post office within one month after selection but before engagement shall be mandatory for a sevak;
- ix) Failure to reside in place of duty for GDS EPM & within delivery jurisdiction of the Post office for other categories of Gramin Dak Sevaks after engagement shall be treated as violative of conditions of engagement and liable for disciplinary action under Rule 10 of the Conduct Rules, requiring removal/dismissal;
- x) Post office shall be located in the accommodation to be provided by Gramin Dak Sevak Branch Postmaster suitable for use as Post Office premises; and
- xi) Combination of duties of a sevak shall be permissible.

Before the Tribunal, respondents have further submitted that a new pension scheme called, "Service Discharge Benefit Scheme", has been introduced by the Department of Posts and that all the petitioners, except the first petitioner, had opted for the same, with effect from 1.4.2001, and that they have been issued with suitable numbers. The first petitioner, had already attained the age of 65 years and discharged from service, with effect from 30.6.2011 afternoon. Ex-gratia of

Rs.60,000/- and severance amount of Rs.55,000/- has been paid to the first petitioner on 01.08.2011.

6. The respondents have contended that Gramin Dak Sevaks, who render only part time service, cannot be equated with regular employees. It is further submitted that only after accepting the terms and conditions of employment, the petitioners have been appointed as Extra Departmental Agents, now called as Gramin Dak Sevaks and governed by Gramin Dak Sevak (Conduct and Engagement) Rules, 2011. Though the part time post of Gramin Dak Sevaks is held by the Hon'ble Apex Court as a civil post, they are not entitled to pension.

7. The respondents have denied the contention that the Gramin Dak Sevaks are working only in rural areas. It is their contention that some categories of GDSs, are working in urban areas also. They further submitted that GDSs are outside the civil service of the Union, and shall not be treated on par with regular Government employees. Gramin Dak Sevaks are entitled to Ex-Gratia and other payments, as may be, decided by the Government of India, from time to time.

8. Before the Central Administrative Tribunal, Madras, the respondents have also contended that as per the Director General of Posts, New Delhi, letter No.45/2/2011-SPB-I dated 27.01.2011, 50% of Multi Tasking Staff are recruited from GDS, on the basis of selection cum seniority and 25%, on the basis of a competitive examination. As regards recruitment to the post of postman, 25%, by direct recruitment on the basis of a competitive examination limited to Gramin Dak Sevaks. As such, the Gramin Dak Sevaks are appointed as Postman, based on the above procedure and not promoted from their post as GDS to postman or Multi Tasking Staff. In the light of the above, respondents have contended that the post of Gramin Dak Sevaks are outside the civil service, and they cannot claim parity with Government servants. It is also their submission that having known the duties and responsibilities of regular Government servants, compared to GDSs, who have to work, only for a period of 3 to 5 hours per day, and having accepted to be members of the "Service Discharge Benefit Scheme", introduced by the Department of Posts, it is not open to the petitioners, to challenge Rule 6 of the Gramin Dak Sevaks (Conduct and Employment) Rules, 2001.

9. Placing reliance on the decision of the Hon'ble Apex Court in Superintendent of Post Offices vs. P.K.Rajamma and ors. reported in 1977 AIR 1677 before the Central Administrative Tribunal, contention has been made by the petitioners that, the then Extra Departmental Agents, now Gramin Dak Sevak post, has been declared as a civil post and a decision of the Hon'ble Full Bench of this court in Tamil Nadu Tamil and English Schools Association vs. The State of Tamil Nadu and ors. (W.P.No.19747 and batch decided on 20.4.2000) reported in 2000 (II) CTC 344 has also been pressed into

service, to contend that the policy of the Central Government, to deny pension to Gramin Dak Sevaks is arbitrary and violative of Articles 14 and 16 of the Constitution of India.

10. Adverting to the rival contentions, vide order in O.A.No.785/2011 dated 28.4.2014, at paragraph No.6, the Central Administrative Tribunal, Madras, has ordered as here under:

" 6. We have carefully considered the rival contentions and perused the material available on record. The applicants have served as EDDAs/GDSs for periods ranging from 15 to 27 years and they have also subjected themselves to the terms conditions of services. They have also opted for Service Discharge Benefit Scheme. We find that the grounds taken in the O.A to challenge Rule 6 of GDS (C&E) Rules, 2001 is wholly unjustifiable as the applicants were fully aware that they are required to discharge only part time job and they were discharging their duties only as part time employees of the department and continued as such under the GDS (Conduct and Employment) Rules, 2001 and the erstwhile P&T Rules. The recommendations of the Justice Talwar Committee are matter of record and would be no consequence to the issue involved in this case since this falls under the realm of policy decision and as per the policy decision of the Government of India, a separate category of posts are continued in the name of GDS in order to reach the postal services so far and wide areas of the country. The applicants having been fully aware of these facts and the terms and conditions of their appointment has indicated that they are only part time employees, they cannot now challenge Rule 6 of GDS (Conduct and Employment) Rules, 2001 relating to pension. We find that the terms and conditions of their employment are not comparable to that of regular employees of the postal department or of any other department for that matter. We find that the judgments cited by the learned counsel for the applicants are not of much help to the facts of the present case. The contentions raised in the O.A. are wholly untenable and devoid of merit and as such the O.A. is liable to be dismissed. Accordingly, the O.A. is dismissed. No order as to costs."

11. Being aggrieved by the same, instant writ petition is filed.

12. Assailing the correctness of the order made in O.A.No.785 of 2011 dated 28.4.2014, Mr.K.Ravi Ananthapadmanabhan, learned counsel for the petitioners,

traced the historical background of the post of Extra Departmental Agents/Gramin Dak Sevaks and contended that 75% of the country's population is covered by Sevaks. He further submitted that when the Hon'ble Apex Court in Superintendent of Post Offices vs. P.K.Rajamma and ors. reported in 1977 AIR 1677 held that the post of Gramin Dak Sevaks is a civil post, consequently, they have to be treated on par with Central Government servants, and as a social security measure, be declared that they are eligible for pension. According to him, the policy decision of the Central Government in framing Rule 6 of Gramin Dak Sevak Rules, 2001, is arbitrary, irrational and violative of Articles 14, 16 and 21 of the Constitution of India.

13. Placing reliance on a judgment of this court in Govt. of Tamil Nadu v. Thirukoil Paniyalargal Sangam Ambasamudram, reported in 2001 (1) CTC 141, learned counsel for the petitioners further contended that when pension was denied to various categories of temple employees, this court, directed the Government to formulate a pension scheme for all the servants and employees of the temple, having regard to the nature of work performed by them, on similar lines, applicable to Archakas and Odhuvars.

14. It is also his contention that, Hon'ble Justice Talwar Committee had already recommended that pensionary benefits should be given to Gramin Dak Sevaks. Placing reliance on a decision of the Central Administrative Tribunal, Madras, in O.A.No.1051 etc. batch dated 22.6.2012, learned counsel for the petitioners, contended that, there cannot be a different treatment, for the employees working in Postal Department, and Gramin Dak Sevaks, in the matter of pension.

15. Referring to the counter affidavit filed by the respondents, learned counsel for the petitioners contended that the stand of the respondents is untenable, for the above said reasons, and submitted that Rule 6 of Gramin Dak Sevak Rules, 2001 is arbitrary, violative of Articles 14, 16 and 21 of the Constitution of India, and the same has to be struck down.

16. Per contra, to sustain the impugned order made in O.A.No.785/2011 dated 28.4.2014 of the Central Administrative Tribunal, and constitutionality of Rule 6 of Gramin Dak Sevak Rules, 2001, Mr.J.Madanagopal Rao, learned counsel for the respondents, reiterated the submissions made before the Tribunal. He further submitted that though Mr.Justice Talwari Committee had submitted a report that Gramin Dak Sevaks, be granted pension, Department of Posts had not accepted the same. He further submitted that GDSs are not the feeder category posts, for promotion to the post of Postman. As per the existing recruitment rules, for the post of Postman, 25% of the vacancies will be filled up by promotion, by selection based on seniority of Multitasking staff, 25%, on the basis of limited Departmental Competitive Examination, where

promotions, amongst Multitasking Staff, failing which, by direct recruitment, and 25% by direct recruitment, on the basis of competitive examination limited to Gramin Dak Sevaks and 25% by Direct Recruitment, for open market.

17. He further submitted that the petitioners are eligible for time related continuity allowance only, and this allowance is fixed based on the work allotted. They are not entitled to basic pay, earned leave etc. They cannot be treated on par with regular employees. They are given separate insurance coverage, under Gramin Dak Sevaks General Insurance Scheme, and increase in time relating continuity allowance. Learned counsel for the respondents further submitted that GDSs are eligible for 10 days paid leave for every six months. They are working 3 to 5 hours only.

18. By way of reply and inviting the attention of this court to the pay slip of one of the petitioners, learned counsel for the petitioners submitted that, a GDS Mail Deliverer, one of the Gramin Dak Sevaks, is paid Basic pay, DA, cycle allowance and SA. Therefore, he submitted that the contention of the respondents in their counter affidavit that they are not entitled to basic pay, is not correct.

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

19. Letter of appointment of Gramin Dak Sevak enclosed in the typed set of papers shows that the employment is in the nature of contract liable to be terminated and Gramin Dak Sevaks are governed by the Post and Telegraphic Extra Departmental Agents (Conduct and Service) Rules, as amended from time to time and currently, it is called as Gramin Dak Sevaks (Conduct and Engagement) Rules, 2011. It is a fact that, after tracing the historical background and legal status, the Hon'ble Justice Talwar's Committee has recommended various other things, including pension. Few paragraphs from the report are extracted hereunder:

"1. This is the further the successive Committee set-up by the Government of India to go into the service conditions, wage structure and to examine the reasonableness of introducing a social security scheme for the extra-departmental agents working in the Department of Post. Mr. Justice Charanjit Talwar, a former Judge of the Delhi High Court, took over as Chairman of the one-man Committee on 10 May, 1995.

2. In response to the public notice issued by the Committee, about 2100 letters/Memorandum were received from staff unions and members of public. The Committee wrote (i) to 23 foreign postal administrations to elicit information relating to the postal services in remote rural areas in their country; (ii) to all the Members of Parliament,

Lok Sabha and Rajya Sabha, Chief Secretaries of all the states along with a questionnaire and requested them to give their views regarding the postal services in the rural areas and (iii) to all Heads of Postal Circles requesting them to offer their suggestions on basic issues before the Committee. The Committee got a favourable response.

4. The Committee has traced the genesis the Branch Office system from the British day till independence and thereafter. It has been brought out that the extra-departmental agents were treated on the same footing as Government servants and eventually, as civil servants in view of promulgation of the statutory rules under the proviso to Article 309 of the Constitution in the year 1959. The reasons for which these rules were repealed and non-statutory P&T ED Agents (Conduct and Service Rules) 1964 promulgated, have been found to be erroneous. It has been observed by the Committee that ED Agents are covered within the purview of Article 309 of the Constitution. The Committee has recommended that the E.D. Agents ought not to be treated as employees on contract basis or on the basis that their employment is in the 'nature of contract'. The Committee has recommended that the nomenclature 'Extra Departmental System' be changed to 'Rural Postal System' and the 'Extra Departmental Agents' be called 'Rural Postal Employees' or 'Gramin Dak Karamchari'.

Conditions of employment and wage structure

Adequate means of independent livelihood:-

The committee has concluded that the existing condition of 'adequate means of independent livelihood' for appointment as extra-departmental agents is constitutionally invalid. Therefore, it has been recommended that the said condition should be deleted.

(ii) Working hours:- The Committee has recommended that the minimum working hours of a Branch Office should be 3 hours and BPMs be paid at least for 3 hours on the basis of 'work attendance' and not on 'point system'.

Need to increase wages:- The Committee has proposed to increase the emoluments of extra-departmental agents by payment of salary on pro-rata basis of payment to whole-time departmental employees. It has suggested ways of increasing their working hours by way of combination of duties and by increasing the work-load of the Branch Offices.

14.1 The Committee has also recommended that ED Agents, like the wholetime employees, should be

suitably compensated whenever they are brought on duty beyond working hours and on holidays/week off days.

21. The Committee has recommended that ED Agents be granted pension, gratuity, General Provident Fund. The minimum has been fixed at Rs.610/- per month."

20. Though the petitioners have contended that Hon'ble Justice Talwar's Committee's report, among other things, has favoured grant of pension to Gramin Dak Savaks, it is the specific stand of the Senior Superintendent of Posts, Kanyakumari Division, Nagercoil, the 4th respondent herein, that the Department of Posts had not accepted the report. Counter affidavit has been filed by him on behalf of other respondents, which includes the Union of India represented by its Secretary (Posts), Director General, India Post & Chairman Postal Services Board, Dak Bhavan, New Delhi - 110 001, the first respondent herein. This aspect has not been refuted by the petitioners.

21. As per Rule 6 of Gramin Dak Savak Rules, 2001, GDSs shall not be entitled to any pension. But, as per the Director General's instruction, they are eligible for payment of ex-gratia and gratuity. From the perusal of the pay slip of Ramachandran, namely, the first petitioner herein, it could be deduced that the first petitioner, is on a fixed scale of pay, and as rightly pointed out by Mr.J.Madanagopal Rao, learned counsel for the respondents, Gramin Dak Sevaks is not a feeder category for promotion to the post, falling in Group 'D' category. But 25% of Group 'D' posts are filled up by direct recruitment, on the basis of a competitive examination limited to GDSs.

22. In Superintendent of Post Offices vs. P.K.Rajamma and ors. reported in 1977 AIR 1677, the Hon'ble Apex Court, has considered the correctness of the orders of the Kerala, Andhra and Orissa High Courts, which held that dismissal or removal of the respondents therein, without complying with the provision of Article 311(2) of the Constitution of India, as invalid. One of the questions before the Hon'ble Supreme Court was where the post of extra-departmental agent, now Gramin Dak Sevak, is a civil post, as contemplated under Article 311 of the Constitution of India, and thus, eligible for protection under Article 311(2). In the above context, taking note of the decision of the Hon'ble Apex Court in State of Assam & Ors. vs. Kanak Chandra Dutta reported in (1967) 1 SCR 679, the Hon'ble Apex Court in P.K.Rajamma's case, held that the post of extra departmental agent, now Gramin Dak Sevak, is a civil post. At this juncture, it is worthwhile to extract few paragraphs from the said judgment:

"A post, it was explained, exists apart from the holder of the post. "A post may be created before the appointment of simultaneously with it.

A post is an employment, but every employment is

not a post. A casual labourer is not the holder of a post. A post under the State means a post under the administrative control of the State. The State may create or abolish the post and may regulate the conditions of service of persons appointed to the post." Turning now to the rules by which the respondents were admittedly governed, it appears that they contain elaborate provisions controlling the appointment, leave, termination of services, nature of penalties, procedure for imposing penalties and other matters relating to the conduct and service of these extra departmental agents. There is a schedule annexed to the rules naming the appointing authorities in respect of each category of employees. Rule 5 states that the employees governed by these rules shall be entitled to such leave as may be determined by the Government from time to time and provides that if an employee fails to resume duty on the expiry of the maximum period of leave admissible and granted to him or if an employee who is granted leave is absent from duty for any period exceeding the limit upto which he could have been granted leave he shall be removed from the service unless the Government decides otherwise in the exceptional circumstances of any particular case. The services of employees who had not put in more than three years continuous service are liable to be terminated at any time under rule 6 for unsatisfactory work or for any administrative reason. The rules also indicate the nature of penalties which may be imposed on an employee and the procedure for imposing them. A right of appeal is provided against an order imposing any of the penalties on the employee. Various other conditions of service are also provided in these rules.

It is thus clear that an extra departmental agent is not a casual worker but he holds a post under the administrative control of the State. It is apparent from the rules that the employment of an extra departmental agent is in a post which exists "apart from" the person who happens to fill it at any particular time. Though such a post is outside the regular civil services, there is no doubt it is a post under the State. The tests of a civil post laid down by this Court in Kanak Chandra Dutta's case (supra) are clearly satisfied in the case of the extra departmental agents. For the appellants it is contended that the relationship between the postal authorities and the extra departmental agents is not of master and servant, but really of principal and

agent. The difference between the relations of master and servant, and principal and agent was pointed out by this Court in Lakshminarayan Ram Gopal and Son Ltd. v. The Government of Hyderabad. (1) on page 401 of the report the following lines from Halsbury's Laws of England (Hailsham edition) Volume 1, at page 193, article 345, were quoted with approval in explaining the difference: (1) [1955] 1 S.C.R. 393."

22. Context in which, the Hon'ble Supreme Court held that the post of extra-departmental agent, now Gramin Dak Sevak, is a civil post and entitled to protection under Article 311(2) of the Constitution of India, cannot be applied to the facts of this case to hold that Gramin Dak Savaks are also to be treated as civil servants, for the purpose of pension, and other benefits. At this juncture, this court, deems it fit to consider Rule 3 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 issued by the Government of India on 28.2.1957.

23. Rule 3 of Central Civil Services (Classification, Control and Appeal) Rules, 1957 (now 1965) is extracted here under:

3. APPLICATION: (1) These rules shall apply to every Government servant including every civilian Government servant in the Defence Services, but shall not apply to -

(a) any railway servant, as defined in Rule 102 of Volume I of the Indian Railways Establishment Code,

(b) any member of the All India Services,

(c) any person in casual employment,

(d) any person subject to discharge from service on less than one month's notice,

(e) any person for whom special provision is made, in respect of matters covered by these rules, by or under any law for the time being in force or by or under any agreement entered into by or with the previous approval of the President before or after the commencement of these rules, in regard to matters covered by such special provisions.

(2) Notwithstanding anything contained in sub-rule (1), the President may by order exclude any Group of Government servants from the operation of all or any of these rules.

(3) Notwithstanding anything contained in sub-rule (1), or the Indian Railways Establishment Code, these rules shall apply to every Government servant temporarily transferred to a Service or post coming within Exception (a) or (e) in sub-rule (1), to whom, but for such transfer, these rules would apply.

(4) If any doubt arises, - (a) whether these rules or any of them apply to any person, or (b) whether any person to whom these rules apply belongs a particular Service, the matter shall be referred to the President who shall decide the same.

24. As per the Central Civil Services (Classification, Control and Appeal) Rules, 1965, the persons, to whom, not applicable, are extracted hereunder:

Persons to whom not applicable.- In exercise of the powers conferred by sub-rule (2) of Rule 3 of Central Civil Services (Classification, Control and Appeal) Rules, 1957 (now 1965), the President hereby directs that the following classes of Government Servants shall be wholly excluded from the operation of the said rules, namely:-

Ministry of External Affairs

Locally recruited staff in Missions abroad.

Ministry of Communication

Posts and Telegraphs Department

- (i) Extra-Department Agents.
- (ii) Monthly-rated staff paid from Contingencies other than those brought on to regular establishment
- (iii) Monthly-rated work-charged and other employees not on regular establishment.
- (iv) Daily-rated staff paid from contingencies
- (v) Daily-rated workmen paid by the day, week, month, etc.
- (vi) All hot weather and monsoon establishment
- (vii) Non-departmental telegraphists and telephone operators. [G.I., M.H.A., Noti. No.S.R.O.609, dated 28th February, 1957]

25. Rule 2 of the Central Civil Services (Pension) Rules, 1972, is extracted hereunder:

2. Application.- Save as otherwise provided in these rules, these rules shall apply to Government servants appointed on or before 31st day of December, 2003 including civilian Government servants in the Defence Services appointed substantively to civil services and posts in connection with the affairs of the Union which are borne on pensionable establishments, but shall not apply to -

- (a) railway servants;
- (b) persons in casual and daily rated employment;
- (c) persons paid from contingencies;
- (d) persons entitled to the benefit of a Contributory Provident Fund;
- (e) members of the All India Services;

(f) persons locally recruited for service in diplomatic, consular or other Indian establishments in foreign countries;

(g) persons employed on contract except when the contract provides otherwise; and

(h) persons whose terms and conditions of service are regulated by or under the provisions of the Constitution or any other law for the time being in force.

We have already seen that the terms and conditions of the appointment of Gramin Dak Seavaks do not provide similar benefits given to the Central Government Servants. Gramin Dak Sevaks are outside civil service.

26. We have already extracted the service conditions of Gramin Dak Sevak in the foregoing paragraphs, wherein, the rules make it clear that a sevak shall be outside the civil service of the Union and that a sevak shall not claim to be at par with the Central Government servant. As per the terms and conditions of engagement, a sevak shall not be required to perform duty beyond the period of five hours a day, whereas, the Government servants have to work for eight hours. Except Group 'D', the age of superannuation for Central Government servant is 58 years, whereas, a sevak shall not be retained beyond 65 years of age.

27. In J. Shanmugasundaram and others vs. Union of India and others in O.A. Nos. 1051 of 2010 etc. batch of original applications dated 22.6.2012, the prayer of the applicants therein was to absorb them, against the vacancies of Group 'D' posts, in accordance with Part II of the Schedule under the Department of Posts (Group - D) posts) Recruitment Rules, 2002. Reliance has been made on the decision of the Ernakulam Bench of the CAT in OA 314/2008 etc., confirmed by the Kerala High Court. Contentions have been made that Group 'D' posts are filled up, by Gramin Dak Savaks, selected according to seniority and a separate roster has to be maintained, like any other recruitment. Contentions have also been made by the respondents therein/department, that as on the date of hearing of the original applications, there was no Group 'D' cadre and that the same has been replaced by a new cadre called, the multi tasking staff, belonging to Group 'C' cadre, and therefore, respondents therein have contended that the Department of Posts (Group - D) Recruitment Rules, 2002, was not in force and redundant. Rejecting the said contention and following the decision of the Central Administrative Tribunal, Ernakulam Bench, confirmed by the Kerala High Court, in a batch of original applications, CAT, Madras has held that there cannot be a different treatment for the employees working in Tamil Nadu and Kerala. The Judgment relied on by the learned counsel for the petitioners relates to absorption and in our view, it has absolutely no relevance to the facts on hand, where the question before this court is, whether pension has to be granted to Gramin Dak Sevaks.

28. In Sub Divisional Inspector of Posts, Vaikom vs. Theyyan Joseph reported in (1996) 8 SCC 489, the Hon'ble Apex Court held that the method of recruitment, conditions of service, scale of pay and the conduct rules regarding the service conditions of extra departmental agents are governed by rules and do not belong to the category of workmen, attracting the provisions of the Industrial Disputes Act, 1947. Question considered therein was as to whether the provisions of Industrial Disputes Act, 1947, would be applicable to the case of Gramin Dak Sevaks or not, in the matter of termination.

29. In Tamil Nadu Tamil & English School Association v. State reported in 2000 (II) CTC 344, while taking a policy decision, as to whether, Tamil/mother tongue should be the medium of instruction, at the primary level, in matriculation schools, the Government of Tamil Nadu, have taken note of a Committee's report and accordingly, issued the impugned Government Order therein. In Government of Tamil Nadu vs. Thirukoil Paniyalargal Sangam Ambasamudram reported in 2001 (1) CTC 141, the prayer therein, was to quash an order of second respondent therein, and to direct the respondents to grant pension to the members of the Sangam, which includes accountants, clerks, record clerks, typists, peons, archakas, maniam, parisaragar, madapalli, kaliyachi, general assistants, florists and others. Though in the above reported judgment, a learned single Judge of this court has directed the Government, to prepare a scheme for grant of retirement benefits to other servants of the temples, with due respect, the same cannot be taken as a precedent, to issue directions, for the reason that the respondents in the counter affidavit have categorically stated that the report of Hon'ble Justice Talwar's Committee has not been accepted. For brevity, at this juncture, this court deems it fit to extract the order of the Government. "though Hon'ble Justice Talwar Committee had reiterated opining entitlement of GDS for pension, the Department of Posts had not accepted and amended the same."

30. We are of the considered view, that the expression civil service and civil posts referred to in Article 311 of the Constitution of India, can be applied, only insofar as protection, to be granted under Article 311 of the Constitution of India, for dismissal, removal, reduction in rank of persons employed in any civil capacity, that no such person shall be punished, unless, he has been given a reasonable opportunity to show cause against the action proposed to be taken against him. No doubt, in Rajamma's case, the Hon'ble Supreme Court has declared that the post of Extra Departmental Agents, now Gramin Dak Sevak, as a civil post and in Joseph's case, the Hon'ble Supreme Court also reiterated the same, by declaring them as civil servants, the above said judgments, in our opinion, with due respect, cannot be said to

have declared the law that Gramin Dak Sevaks are also eligible for pension. At this juncture, this court deems it fit to consider few decisions on law of precedence.

(i) In State of Orissa vs. Sudhansu Sekar Misra, reported in AIR 1968 SC 647, the Hon'ble Supreme Court explained as to when a decision can be taken as a precedent, which as follows:-

"A decision is only an authority for what it actually decides. What is of the essence of a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. On this topic, this is what Earl of Halsbury LC said in Quinn v. Leatham, reported in 901 AC 495.

'Now before discussing the case of Allen vs. Flood, reported in 1898 AC 1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all."

It is not profitable task to extract a sentence here and there from a judgment and to build upon it."

ii) In H.Maharajadhiraja Madhav Rao Jiwaji Raoscindia Bahadur vs. Union of India reported in 1971 AIR 530, the Hon'ble Apex Court held as follows:

"...It is difficult to regard a word, a clause or a sentence occurring in a judgment of this Court, divorced from its context, as containing a full exposition of the law on a question when the question did not, even fall to be answered in that judgment."

iii) In Union of India Vs. Dhanwanti Devi, reported in 1996 (6) SCC 44 = 1996 (7) Supreme 51, the Supreme Court has explained, what constitutes a precedent, which as follows:-

"Before advertng to and considering whether solatium and interest would be payable under the Act, at the outset, we will dispose of the objection raised by Shri Vaidyanathan that Union of India v.

Hari Krishan Khosla reported in 1993 Supplement (2) SCC 149, is not a binding precedent nor does it operate as ratio decidendi to be followed as a precedent and is per se per incuriam. It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates— (i) findings of material facts, direct and inferential. A inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. The concrete decision alone is binding between the parties to it, but it is the abstract ratio decidendi. ascertained on a consideration of the judgment in relation to the subject-matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding. It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution. A deliberate judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent, no matter for what reason, and the precedent by long recognition may mature into rule of stare decisis. It is the rule deductible from the application of law to the facts and circumstances of the case which constitutes its ratio decidendi.

Therefore, in order to understand and appreciate the binding force of a decision it is always necessary to see what were the facts in the case in which the decision was given and what was the point which had to be decided. No judgment can be read as if it is a statute. A word or a clause or a sentence in the judgment cannot be regarded as a full exposition of law. Law cannot afford to be static and therefore, Judges are to employ an intelligent technique in the use of precedents.

iv) In *State of Punjab v. Devans Modern Breweries Ltd.*, reported in (2004) 11 SCC 26, the Hon'ble Supreme Court explained the doctrine of precedents and when a judgment becomes *per incuriam*. Paragraphs 334 to 336, of the judgment are relevant and they are as follows:-

Precedent

334. The doctrine of precedent is a well-accepted principle. A ruling is generally considered to be binding on lower courts and courts having a smaller bench structure:

"A precedent influences future decisions. Every decision is pronounced on a specific set of past facts and from the decision on those facts a rule has to be extracted and projected into the future. No one can foresee the precise situation that will arise, so the rule has to be capable of applying to a range of broadly similar situations against a background of changing conditions. It has therefore to be in general terms and 'malleable' ... No word has one proper meaning, nor can anyone seek to fix the meaning of words for others, so the interpretation of the rule remains flexible and open-ended. (See *Dias Jurisprudence*, 5th Edn., p. 136.)"

335. However, although a decision has neither been reversed nor overruled, it may cease to be "law" owing to changed conditions and changed law. This is reflected by the principle "*cessante ratione cessat ipsa lex*".

"... It is not easy to detect when such situations occur, for as long as the traditional theory prevails that judges never make law, but only declare it, two situations need to be carefully distinguished. One is where a case is rejected as being no longer law on the ground that it is now thought never to have represented the law; the other is where a case, which is acknowledged to have been the law at the time, has ceased to have that character owing to altered circumstances. (See *Dias Jurisprudence*, 5th Edn., pp. 146-47.)"

336. It is the latter situation which is often of relevance. With changes that are bound to occur in an evolving society, the judiciary must also keep

abreast of these changes in order that the law is considered to be good law. This is extremely pertinent especially in the current era of globalisation when the entire philosophy of society, on the economic front, is undergoing vast changes.

31. Though Mr.K.Ravi Ananthapadmanabhan, learned counsel for the petitioners has prayed that a direction be issued to the respondents to implement, Hon'ble Justice Talwar's Committee's Report, we are of the view that, it cannot be done, in view of the specific stand of the respondents, in the counter affidavit, which we have explained and it is for the respondents, to decide. Admittedly, the writ petitioners are doing only part time job, and between Gramin Dak Sevaks and regular Group - D servants, in Department of Posts, there is clear variation in service conditions. Though the learned counsel for the petitioners submitted that considering the length of service, nature of duties, service rendered by the Gramin Dak Sevaks in the villages, across the country, they should be paid pension, on par with Group 'D' categories, in postal department, and Rule 6 of Gramin Dak Sevak Rules, 2011, denying pension, is violative of Articles 14, 16 and 21 of the Constitution of India and also contended that the policy of the Government is discriminatory, for the reasons stated supra, this court is not inclined to accept the said contentions.

For the reasons stated supra, there are no merits in this writ petition. Accordingly, it is dismissed. However, there shall be no order as to cost.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

1.Union of India
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Director General India Post
& Chairman Postal Services Board
Dak Bhavan
New Delhi - 110 001

2.The Chief Post Master General
Southern Region
Madurai

3.The Post Master General
Southern Region
Madurai

4.The Senior Superintendent of Post offices
Kanyakumari Division
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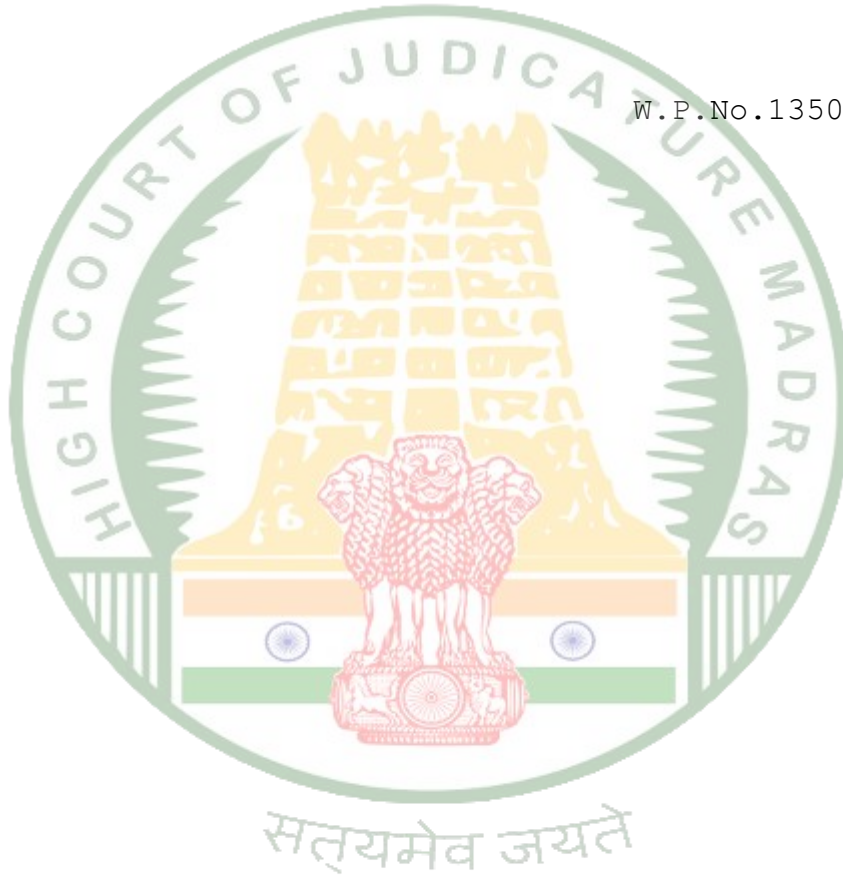
5.The Registrar,
Central Administrative Tribunal
High Court Campus, Chennai

+1 cc to M/s.K.Ravi Anantha Padmanabhan, advocate, sr.58433

+1 cc to Mr.J.Madanagopal rao, advocate, sr.58425

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W.P.No.13500 of 2016



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