

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:05.02.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

Writ Petition Nos.19415, 23137, 24398 and 28598 of 2015

AND

MP1/15 IN WP.NOS.19415, 23137/15

AND

MP2/15 IN WPS.24398 & 28598/15

W.P.No.19415 of 2015:

1. Union of India
rep. By Director General of Civil Aviation,
Opp. To Safdarjung Airport,
New Delhi.
2. The Deputy Director of Administration,
O/o. Director General of Civil Aviation,
Opp. To Safdarjung Airport,
New Delhi 110 003.
3. Airports Authority of India,
rep. By its Airport Director,
Southern Region, Chennai Airport,
Meenambakkam, Chennai.

... Petitioners

Vs.

1. The Registrar,
Central Administrative Tribunal,
Chennai.
2. S.Savithri

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the records from the file of the 1st respondent made in O.A.No.310/00581/2014 dated 12.01.2015 and quash the same.
W.P.No.23137 of 2015:

1. Union of India
rep. by Director General of Civil Aviation,
Civil Aviation Department,
Opp. to Safdarjung Airport,
New Delhi 110 003.
2. The Deputy Director of Administration,
O/o. Director General of Civil Aviation,
Opp. to Safdarjung Airport,
New Delhi 110 003.

... Petitioners

Vs.

1. The Registrar,
Central Administrative Tribunal,
Chennai.
2. B.Parthiban
3. Airports Authority of India,
rep. by its Airport Director,
Southern Region, Chennai Airport,
Meenambakkam, Chennai.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the records from the file of the 1st respondent made in O.A.No.310/00583/2014 dated 22.04.2015 and quash the same.

W.P.No.24398 of 2015:

1. Union of India
rep. By Director General of Civil Aviation,
Civil Aviation Department,
Opp. to Safdarjung Airport,
New Delhi 110 003.
2. The Deputy Director of Administration,
O/o. Director General of Civil Aviation,
Opp. to Safdarjung Airport,
New Delhi 110 003.

... Petitioners

Vs.

1. The Registrar,
Central Administrative Tribunal, Chennai.
2. S.Jaikumar

3. Airports Authority of India,
rep. by its Airport Director,
Coimbatore Airport,
Coimbatore.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the records from the file of the 1st respondent made in O.A.No.310/-512/2014 dated 06.03.2015 and quash the same.

W.P.No.28598 of 2015:

1. Union of India
rep. By Director General of Civil Aviation,
Opp. To Safdarjung Airport,
New Delhi 110 003.
2. The Deputy Director of Administration,
O/o. Director General of Civil Aviation,
Opp. To Safdarjung Airport,
New Delhi 110 003.

... Petitioners

Vs.

1. The Registrar,
Central Administrative Tribunal,
Chennai.
2. M.Selvaraj
3. Airports Authority of India,
rep. By its Regional Executive Director,
Southern Region, Chennai Airport,
Meenambakkam, Chennai.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the records from the file of the 1st respondent made in O.A.No.310/01211/2014 dated 29.04.2015 and quash the same.

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For Petitioners in all W.Ps. : Mr.Su.Srinivasan

For 2nd Respondent in all W.Ps.: Mr.Balan Haridoss

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C O M M O N O R D E R

(Order of the Court made by S.VAIDYANATHAN,J.)

As the issue involved in all the Writ Petitions is one and the same, the above Writ Petitions are taken up for disposal by a common order.

2. Challenging the impugned orders dated 12.01.2015, 22.04.2015, 06.03.2015 and 29.04.2015, respectively, passed by the 1st respondent/Central Administrative Tribunal, Chennai, in O.A.No.310/00581/2014, O.A.No.310/00583/2014, O.A.No.310/00512/2014 and O.A.No.310/01211/2014, respectively, the Union of India, represented by the Director General of Civil Aviation and another have come up with these Writ Petitions.

3. According to the petitioners, the 2nd respondent/employee in all the Writ Petitions, joined the Airports Authority of India in different posts and on different dates and their appointments were confirmed, subsequently. For the sake of convenience, the 2nd respondent in all the Writ Petitions shall hereinafter be referred to as 'employees'. The date of joining of the employees herein and the date of their absorption with the petitioners are tabulated below:

Writ Petition	Name of the 2 nd respondent	Post held at the time of joining	Date of joining with Central Government	Period of service before absorption
W.P.No.19415/2015	S.Savithri	Junior Clerk	27.05.1980	9 years 3 months 23 days
W.P.No.23137/2015	B.Parthiban	Junior Clerk	07.10.1980	8 years 11 months
W.P.No.24398/2015	S.Jaikumar	Chowkidar	06.10.1980	9 years
W.P.No.28598/2015	M.Selvaraj	Junior Clerk	15.12.1980	8 years 10 months 17 days

4. On the formation of National Airports Authority by virtue of National Airports Authority Act, 1985, as per the terms and conditions of the said Act, the employees were absorbed in the Airports Authority of India (AAI), National Airports Division (NAD) on "as is where is basis" on 02.10.1989 owing to their posting. Since, at the time of absorption, they had not put in 10 years of service, vide notice dated 15.09.1989, an option was given by the National Airports Authority to all deputationists' to exercise an "option" under Section 13(3) of 1985 Act, to get themselves absorbed, by

29.09.1989. It was clearly mentioned therein that if the employees wanted to be reverted to Government, they could do so and if they choose to continue with the Authority on completion of the deputation period, they will be construed to be permanently employed in the National Airports Authority and on such permanent employment, their names will be struck down from the Department, where they were working and no post for the same will be created in the Department.

5. It is further stated by the petitioners that the employees were not ignorant and illiterate and they were well aware that they are going to become Public Sector Undertaking (PSU) employees' and having exercised their 'Option' to become employees of National Airports Division (NAD), their services were transferred to National Airport Division (NAD), based on the stipulated terms and conditions. As per the option exercised by the employees, they were paid the DCRG, etc, as they had not completed 10 years of service, for qualifying themselves, for grant of pro-rata pension, as per the relevant Rules prevalent at that time. Also, the benefit of rounding off of the service was available only with effect from 28.06.1983. Wherein, a relaxation of 3 months was available, as a special gesture to those persons who have worked with the Government for 9 years and 9 months, so that their services can be rounded off to 10 years, thereby qualifying them for grant of pro-rata pension.

6. It is the case of the petitioners that the relief claimed by the employees that they must be ordered to shift their date of absorption with the Department, is unacceptable and cannot be implemented, as they did not have the Government Service of 9 years and 9 months, which is the minimum qualifying service for grant of pro-rata pension. Since the 1st respondent/Tribunal allowed the applications filed by the employees, the petitioners, having no other efficacious alternative remedy, have approached this Court.

7. Learned counsel for the petitioners would strenuously contend that the employees herein having exercised their option to become permanent employees of Public Sector Unit (PSU), cannot claim benefits of both, that too after having enjoyed the benefits available to the PSU employees, which are higher than the Central Government employees. He would submit that the relaxation of 3 months is also not applicable to the employees herein, as they have not put in 9 years 9 months service, for grant of pro-rata pension as per CCS Pension Rules, 1972. Contending that the order of the 1st respondent/Tribunal is unjustifiable and unsustainable as it is against the terms and conditions of the Official Memorandum dated 05.06.1989, the petitioners sought quashing of the orders impugned in the above Writ Petitions.

8. To substantiate his stand, learned counsel for the petitioners has relied on a Delhi High Court decision, which was a case filed by 101 employees in W.P.(C) No.4599 of 1995 and W.P.(C) No.8789 of 2007, wherein, vide order dated 29.08.2012, a reference was made to an Apex Court judgment in the case of Union of India v. M.K.Sarkar, sub-paragraph 26 of which would read thus:

"26. A claim on the basis of guarantee of equality, by reference to someone similarly placed, is permissible only when the person similarly placed has been lawfully granted a relief and the person claiming relief is also lawfully entitled for the same. On the other hand, where a benefit was illegally or irregularly extended to someone else, a person who is not extended a similar illegal benefit cannot approach a court for extension of a similar illegal benefit. If such a request is accepted, it would amount to perpetuating the irregularity. When a person is refused a benefit to which he is not entitled, he cannot approach the court and claim that benefit on the ground that someone else has been illegally extended such benefit. The fact that someone who may not be entitled to the relief has been given relief illegally, is not a ground to grant relief to a person who is not entitled to the relief."

9. In reply, learned counsel appearing for the 2nd respondent in all the Writ Petitions, would submit that the petitioners have shifted the date of absorption for some of the employees on their own and also pursuant to the orders passed by this Court. While so, non-extension of the said benefit to the employees herein, has forced them to file applications before the Tribunal and that when the Tribunal was pleased to allow the Original Applications filed by the employees in view of the earlier judgment of a Division Bench of this Court, the claim of the petitioners to quash the order passed by the Tribunal, thereby denying similar benefits to the employees herein, without any reasonable cause would be in violation of Articles 14 and 21 of the Constitution of India.

10. Heard the learned counsel on either side and gave careful consideration to the materials available on record.

11. The operative portion of the impugned common order dated 29.04.2015 passed by the 1st respondent Tribunal in O.A.No.310/01211, 01234, 01235, 01236 and 00256/2014, would read thus:

"10. In the result, all these applications are allowed as prayed for by them. We also issue the following directions:

"(i) The respondents 1 & 2 are directed to calculate the pro-rata pension as if the applicants in O.A. 1211, 1225 and 256 of 2014 were absorbed in the 3rd respondent's organisation with effect from 15.12.1990, 03.03.1981 and 21.03.1979 respectively and grant them pro-rata pension including arrears and in respect of the husbands of the applicants in O.A.1234 and 1236 of 2014, the date of absorption as 15.04.1981 and 21.03.1979, respectively, and grant them the consequential pro-rata pension/family pension to the applicants in the said two O.As., including arrears of pension/family pension. However, the arrears would be paid to all the applicants herein from the date on which the OAs were filed before the Tribunal. This exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

(ii) The applicants are also directed to refund the Gratuity already received by them with 9% simple interest per annum and the Department will adjust the arrears and pay the balance to them. If any amount is payable by the applicants, by calculating such amount with interest at 9% per annum, the applicants would refund the same within a period of three months from the date on which the communication would be received."

12. In similar circumstances, a Division Bench of this Court, by an order dated 03.04.2009 in W.P.No.39431 of 2005, referring to the Apex Court judgment in the case of Union of India v. Tareem Singh (2008 (2) SCC 765), allowed the Writ Petition in part, holding that the order of absorption of the petitioner therein shall be deemed to have postponed till the date when he would have completed 10 years of service under the Union of India and on that basis, pro-rata pension payable to the petitioner shall be calculated and paid to him. For better understanding, relevant portion of the order passed in the said Writ Petition is extracted below:

"11. Therefore, in our opinion, even though the present petitioner could have claimed for "shifting of the date of absorption" with the similarly placed others, since he filed the case

before the Tribunal in the year 2003, we deem it proper that the benefits shall be extended to him from the date of such application and not from an earlier date, as has been earlier submitted by learned counsel for the petitioner. In the present case, as already noticed, since the concerned authorities had given benefits to similarly placed employees, there was no reason to deny the similar benefits to the present petitioner and to treat the petitioner differently. Therefore, we allow the writ petition in part and observe that the order of absorption of the petitioner shall be deemed to have postponed till the date when he would have completed 10 years of service under the second respondent and on that basis pro-rata pension payable to the petitioner shall be calculated and paid to the petitioner. However, arrears would be paid from the date on which the Original Application was filed before the Tribunal. The petitioner is required to refund the gratuity already received with 9 per cent simple interest per annum. The Department will adjust the arrears and pay the balance to the petitioner. If any amount is payable by the petitioner, by calculating such amount with interest at 9 per cent per annum, the petitioner would refund the same within a period of three months from the date on which the communication would be received. The order shall be complied with within a period of three months from the date of receipt of a copy of the order. No costs."

13. It would also be worth referring to the finding given by the Apex Court in Union of India v. Tareem Singh (2008 (2) SCC 765), which would read thus:

"7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an

exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.

8. In this case, the delay of 16 years would affect the consequential claim for arrears. The High Court was not justified in directing payment of arrears relating to 16 years, and that too with interest. It ought to have restricted the relief relating to arrears to only three years before the date of writ petition, or from the date of demand to date of writ petition, whichever was lesser. It ought not to have granted interest on arrears in such circumstances."

14. Apart from the above decision, we find as many as four Division Bench orders of this Court, which are in support of the employees. In one such order, a Division Bench of this Court, on 30.09.2013 in W.P.No.10422 of 2013, etc batch, was pleased to hold as under:

"6. It is not in dispute that the decision rendered by the Co-ordinate Bench at Kerala has become final. It is also not in dispute that the said decision has been given effect to. The further fact that the private respondents herein are also identically placed like that of the applicants in those cases is also not in dispute. It is no doubt true that a dismissal of a Special Leave Petition would not amount to a final

approval of the Honourable Apex Court, however, in the case on hand, we are concerned with the element of fairness to be adopted by the petitioners between the same group of employees. The petitioners being model employers, cannot confer benefits only to their similarly placed employees as against the private respondents. Right to treat equally placed persons similarly is a guaranteed right under Article 14 of the Constitution of India. When two forums have considered the scope and applicability of relevant Rules on the earlier occasion, we do not want to disturb the said reasoning at this point of time. In that view of the matter, we do not find any error in the orders passed by the Central Administrative Tribunal as it was bound to follow the ratio laid down by its Co-ordinate Bench as confirmed by the Honourable High Court of Kerala. Therefore, we do not find any merit in all these Writ Petitions. Accordingly, they are dismissed."

15. It is pertinent to note that in a similar circumstance, wherein, a batch of Writ Petitions was filed in W.P.Nos.14769 to 14773 of 2013 by the Union of India, Central Public Works Department, challenging the impugned order passed by the Central Administrative Tribunal, a Division Bench of this Court, by an order dated 04.10.2013, observed as follows:

"5. The learned counsel would further submit that even though a Special Leave Petition was filed and the same was dismissed by the Hon'ble Supreme Court of India on 16.07.2010 by rejecting the request seeking condonation of delay of 317 days in filing the said Special Leave Petition, the said order of the Division Bench has been implemented and similarly placed persons who have not completed 10 years of service in CPWD were granted pension and still they are receiving pension.

6. In the light of the said order passed by the Division Bench of this Court dated 06.04.2009, which has become final, the Tribunal was justified in allowing the O.As filed by the private respondents and hence these Writ Petitions are disposed of in terms of the earlier order made in W.P.No.4213 of 2006, dated 06.04.2009. The petitioners are directed to comply with the direction, as directed above, within a period of

three months from the date of receipt of copy of this order.

16. In all the above judgments, we find that the Court has ordered grant of benefits to the applicants/employees on the ground that the authorities concerned had given benefits to similarly placed employees. When such is the law laid down, this Court has no reason to deny similar benefits to the employees herein and treat them differently.

17. At this juncture, it is worth referring to an Apex Court judgment in the case of Som Prakash Rekhi vs. Union of India (1981 (1) SCC 449), which exclusively deals about pensionary benefits to a poor superannuated employee. Pension is the only means for a superannuated employee to support himself, his spouse and his dependants. Pension is not a gratis or bounty, but, is paid out of regard for past meritorious services. In the case on hand, it is seen that similarly placed employees as that of the employees herein have been ordered shifting of date of absorption in their service, by their employers themselves and in some cases, only by an order of this Court.

18. In view of the above, we find no reason to disagree with the view of the Division Bench of this Court. It is not that the benefits are extended to the employees herein sympathetically. But, on equity, we find no reason to interfere with the order passed by the 1st respondent/Tribunal.

Accordingly, the above Writ Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.
aeb

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To:

1. The Registrar,
Central Administrative Tribunal,
Chennai.
2. The Airport Director,
Airports Authority of India,
Southern Region, Chennai Airport,
Meenambakkam, Chennai.

3. The Airport Director,
Airports Authority of India,
Coimbatore Airport, Coimbatore.

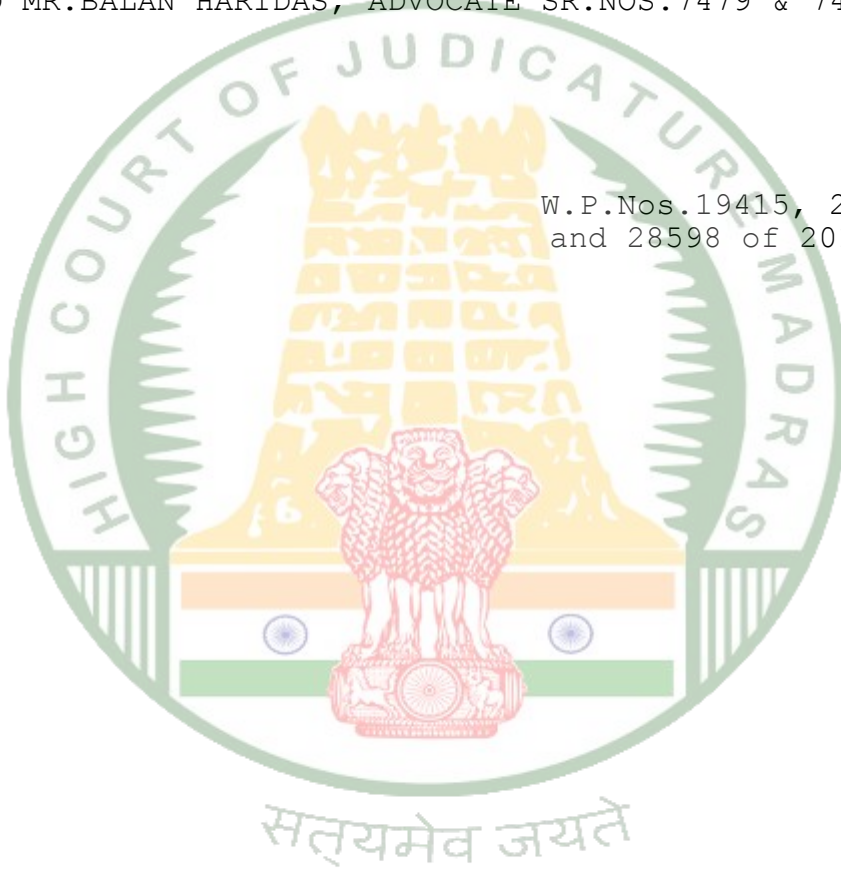
4. The Regional Executive Director,
Airports Authority of India,
Southern Region, Chennai Airport,
Meenambakkam, Chennai.

+ 1 CC TO Mr.Su.Srinivasan, ASST.SOLICITOR GENERAL OF INDIA,
ADVOCATE SR 7839

+ 2 CCS TO MR.BALAN HARIDAS, ADVOCATE SR.NOS.7479 & 7480

KR/4/3/16

W.P.Nos.19415, 23137, 24398
and 28598 of 2015



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