

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

W.P.No.33272 of 2016
W.M.P.No.28747 of 2016

1. The Postmaster General,
Union of India,
Western Region, Coimbatore 641 002.
2. The Inspector of Posts,
Gudalur Sub Division,
Gudalur 643 212. Petitioner

Versus

1. P.P.Subitha
15/89, Kariashola Post,
Pandalur Taluk,
Nilgiris District 643 225.
4. The Presiding Officer,
Central Administrative Tribunal,
Madras Bench, Chennai 600 104. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari, to call for the records of the 2nd petitioner in O.A.No.1142 of 2012, dated 21.01.2016 and quash the same as illegal.

For Petitioner : Mr.J.Madanagopal Rao

ORDER
(Order of the Court was made by S.MANIKUMAR, J.)

Challenge in this writ petition is to an order passed by the Central Administrative Tribunal, Madras Bench, in O.A.No.1142 of 2012, dated 21.01.2016, by which, the Tribunal, while setting aside the order, made in Memo No.PPS/Dlgs/2012, dated 05.09.2012, has directed the writ petitioners, to re-engage the 1st respondent in service, without prejudice to their powers to

proceed, against the 1st respondent, for whatever reasons, which they might deem fit and proper.

2. Facts leading to the writ petition are that the 1st respondent was engaged as Gramin Dak Sevak on 10.03.2011 and working in the said capacity till 05.09.2012. The Inspector of Posts, Gudalur Sub Division, Gudalur, 2nd petitioner herein, issued a proceedings, dated 05.09.2012, terminating the services of the 1st respondent, on the grounds that there were procedural lapses, in the selection to the said post. The said proceedings are extracted hereunder:

"In pursuance of provision Rule 8(1) & (2) and note below Rule 8 of Department of Posts, Gramin Dak Sevak (Conduct & Engagement) Rules, 2011, I, S.Bhanumathi, Inspector of Posts, Gudalur Sub-Division, Gudalur 643 212 hereby terminates the services of Smt.P.P.Sabitha, GDS Packet, Mangorange SO, forthwith for procedural lapses in the selection of the said post as directed in letter No.VIG/5-2/2011/NGS, dated 23.08.2012 of PMG, Western Region, Coimbatore 641 002 and communicated in letter No.BII/GDS Pkr/Dlg, dated 29.08.2012, of the SPOs, Nilgiri Division, Udagamandalam 643 001 and direct that she shall be entitled to claim a sum equivalent to the amount of basic TRCA + DA, in lieu of the notice of 1 month, on claim, at the same rate at which she was drawing then immediately before termination of service."

3. To quash the said proceedings, the 1st respondent has filed O.A.No.1142 of 2012, before the Central Administrative Tribunal, Madras Bench and consequently, prayed for a direction, to re-instate her. in service, with all attendant benefits.

4. The main contention raised before the Tribunal was that there was violation of principles of natural justice and that the order was stigmatic. The petitioners have contended that due opportunity was given to the 1st respondent, but, she has not approached the authorities, but filed the Original Application.

5. Contention has also been made that as per the terms and conditions of appointment of the 1st respondent to the post of Gramin Dak Sevak, no detailed enquiry is required to be conducted, and that the same is extended only to a permanent employee, of postal department.

6. Adverting to the above, the Tribunal has observed that the writ petitioners have disengaged the services of the 1st respondent. On contentions made in the counter affidavit that a post-decisional opportunity was given, the Tribunal has observed

that it was nothing but a cart behind horse. So saying, the Tribunal has set aside the order impugned therein, and directed the writ petitioners, to re-engage the services of the 1st respondent, without prejudice to their powers to proceed further.

7. Being aggrieved by the same, instant writ petition has been filed, on the ground that the Tribunal has failed to consider that, as per the terms and conditions of the notification, the 1st respondent did not possess the prescribed qualification to read and write Tamil. According to the petitioners, the selection of the 1st respondent, to the post of Gramin Dak Sevak Packers, Mangorange, was irregular, for the reason that the application of the 1st respondent was received, after the last date fixed, for receipt of applications.

8. The petitioners have further contended that the 1st respondent had studied in Vivekananda Higher Secondary School, Palemodu, Kerala, and that she had not studied in State of Tamil Nadu, in the regional language of Tamil. Submission has been made that the appointment is purely provisional, and liable to be terminated at any time, for the reason, that a false statement has been given to the appointing authority.

9. Heard Mr.J.Madhanagopal Rao, learned counsel appearing for the petitioners and perused the materials available on record.

10. Material on record discloses that a post of Gramin Dak Sevak Packer, Mangorange, became vacant, due to the promotion of the incumbent, as Postwomen. As per the orders of the Superintendent of Post Offices, Nilgiris Division, in Letter No.BII/GDS-Stt/DLGS, dated 13.10.2010, local notification to fill up the post was issued by the Inspector (Posts), Gudalur Dub Division, vide Memo No.GDS/Rect/Mangorange, dated 03.01.2011, fixing the last date for receipt of applications, as 02.02.2011, earmarking the post as "Unreserved" category and the District Employment Exchange, Udagamandalam, has also been addressed. In response to the local notification, 36 applications have been received and no candidate has been sponsored by the District Employment Office, Udagamandalam. Opening of the applications, for selection to the said post, was done on 14.02.2011, by the Inspector of Posts, Gudalur Sub Division, 2nd petitioner herein, in the presence of the Inspector (Posts), Udagamandalam Sub Division. Five candidates have been short listed, and call letters have been issued to them, on 14.02.2011, by the Inspector of Posts, Gudalur Sub Division, the 2nd petitioner herein, for certificate verification on 01.03.2011. The 1st respondent has obtained 563 marks out of 600 marks. Next to the 1st respondent, the other

four short listed candidates have obtained marks, as detailed hereunder:

Sl.No.	Name of the candidate	Marks secured in SSLC/Matriculation
2	K.Kalaipriya	406/500
3	K.Mohanakalaiarasan	403/500
4	K.Vidhya	377/500
5	M.B.Babitha	375/500

11. On verification of the original certificates, the 1st respondent has been provisionally selected on 04.03.2011. Thereafter, one Mr.K.Mathew, Advocate, Gudalur, in his E-Mail complaint, addressed to the Chief Postmaster General, Tamil Nadu Circle, has alleged that one Mr.S.Sreelal, having 92% marks in SSLC and applied for the above post, was not called for certificate verification, but the writ petitioners have appointed the 1st respondent, who had 85% marks. In this regard, another complaint has also been received from the said Advocate. In the mean time, the said Mr.S.Sreelal, whose application has been rejected, filed O.A.No.753 of 2011, challenging the appointment of the 1st respondent. However, on 30.11.2011, he has withdrawn the said Original Application.

12. Based on the E-Mail complaint, the Postmaster-General, Western Region, Coimbatore, vide letter No.VIG/5-2/2011/NGS, dated 23.08.2012, has directed the Superintendent of Post Offices, Nilgiris Division, to terminate the appointment of the 1st respondent, stating that there were procedural lapses, in the selection and consequently, directed to issue a fresh notification, for selection, by the Inspector (Posts), Gudalur Sub Division, Gudalur, the 2nd petitioner herein. Thereafter, the Superintendent of Post Offices, Nilgiris Division, vide Letter No.BII/GDSPacker/Dlg, dated 29.08.2012, has instructed the Inspector (Posts), Gudalur Sub Division, Gudalur Bazaar 643 212, 2nd petitioner herein, to terminate the appointment of the 1st respondent and issue a fresh notification. Pursuant to the above, the 2nd petitioner herein, has issued a proceedings, dated 05.09.2012.

13. Finding that the order of termination, dated 05.09.2012, was not in consonance with the Rule, the Superintendent of Post Office, Nilgiris Division, Udagamandalam, has reviewed the case and issued the proceeding in Memo No.BII/GDS Packer/Dlg dt at udagamandam 643 001, dated 25.10.2012, which is extracted hereunder:

"Whereas Smt.P.P.Sabitha, GDS Packer, Mangorange SO was terminated by the Inspector (Posts), Gudalur Sub Division, Gudalur under Rule 8(1) &(2) and note below Rule 8 of the Department of Posts, Gramin Dak Sevak (Conduct and Engagement) Rules, 2011, vide her Memo No.PDS/Dlgs/2012, dated 05.09.2012.

Whereas the undersigned on a review of the case considers that the above termination order issued by Inspector (Posts), Gudalur Sub Division, Gudalur is not in consonance with rules.

Now therefore the undersigned in exercise of the powers conferred under Rule 4(4) of Gramin Dak Sevak (Conduct and Engagement) Rules, 2011, proposes to modify the above order of termination of service.

Smt.P.P.Sabitha is hereby given an opportunity to be heard in person at this office within 10 days of receipts of this memo."

14. Vide letter, dated 16.11.2012, the Superintendent of Post Offices, Nilgiris Division, Udagamandalam, has directed the 1st respondent, to appear in person on 02.11.2012, and to submit a written statement. Thereafter, the petitioner has filed the Original Application for the reliefs, stated supra. There were two complaints sent by Mr.K.Mathew, Advocate, Gudalur, alleging that Mr.S.Sreelal, who secured 92% marks in SSLC and applied for the above post, was not called for certificate verification, but the authorities have appointed another person with lesser marks.

15. From the letter No.VIG/5-2/2011/NGS, dated 23.08.2012, of the Postmaster-General, Western Region, Coimbatore, there is nothing to indicate, as to whether, any enquiry was conducted, to find out, the procedural lapses, as alleged. Dehors the complaints made before the competent authority, Mr.S.Sreelal has filed O.A.No.753 of 2011, challenging the appointment of the 1st respondent. But the said Mr.S.Sreelal himself has withdrawn the Original Application on 30.11.2011. While that be the case, there is nothing to indicate in the proceedings of the Postmaster General, Western Region or the Superintendent of Post Offices, Nilgiris District, as to what, are all the procedural lapses, alleged in the selection process.

16. Even the contention of the writ petitioners that the application of the 1st respondent, was received after the last date fixed for receipt of the application, is not supported by any document nor the contents of the letters, dated 23.08.2012 and 29.08.2012, are set out in the counter affidavit filed before the Tribunal. Termination of services of the 1st respondent has been done, in exercise of powers under Rule 8(2) of the Gramin

Dak Sevak (Conduct and Engagement) Rules, by the Inspector of Posts, Gudalor Sub Division, Gudalor, the 2nd petitioner herein.

17. The Superintendent of Post Offices, Nilgiris Division, Udagamandalam, while reviewing the case of the 1st respondent, has observed that the termination order issued by the 2nd respondent, was not in accordance with the rules and modified the above order of termination of service and given an opportunity to the 1st respondent to be heard in person, in his office, within 10 days, from the date of receipt of the memo.

18. At this juncture, it has to be noted that when the Superintendent of Post Offices, Nilgiris Division, Udagamandalam, has proposed to modify the order of termination, there is nothing to indicate, as to what is the modification sought to be effected. So also, when the Superintendent of Post Offices, Nilgiris Division, Udagamandalam, has desired that an opportunity of being heard in person, be given to the 1st respondent, then the termination order, dated 05.09.2012, ought to have been withdrawn, restoring the 1st respondent to her post, as GDS/Packer. The rules do not contemplate any post decisional hearing of termination.

19. Further, the letter, dated 16.11.2012, of the Superintendent of Post Offices, Nilgiris Division, Udagamandalam, addressed to the 1st respondent, also does not indicate, the basis or the cause, to which, the 1st respondent, was called upon, to submit a written statement. Letter, dated 16.11.2012, is vague and bereft of any details. It states that in the oral meeting on 02.11.2012, the 1st respondent was directed to submit a written statement, on that day and therefore, a further letter, dated 16.11.2012, has been issued to forward a written statement on the subject to the Office, within 10 days, from the date of receipt of the said letter.

20. Rule 8 of the Gramin Dak Sevak (Conduct and Engagement) Rules, 2011 deals with termination of engagement and the said Rule is extracted hereunder:

"(1) The engagement of a Sevak who has not already rendered more than three years' continuous service from the date of his engagement shall be liable to be terminated at any time by a notice in writing given either by the Sevak to the Recruiting Authority or by the Recruiting Authority to the Sevak:

(2) The period of such notice shall be one month:

Provided that the service of any such Sevak may be terminated forthwith and on such termination, the Sevak shall be entitled to claim a sum equivalent to the amount of Basic Time Related Continuity Allowance

plus Dearness Allowance as admissible for the period of the notice at the same rates at which he was drawing them immediately before the termination of his service, or, as the case may be, for the period by which such notice falls short of one months."

21. In the case on hand, the 1st respondent has been terminated, in exercise of Rule 8(2) of the abovesaid Rules, by stating that she would be entitled to claim a sum equivalent to the amount of basic TRCA + DA, in lieu of the notice of one month, on claim, at the same rate, at which, she was drawing then immediately, before termination of service. If the termination order, dated 05.09.2012, is modified, then, as observed earlier, it should have been withdrawn. Thereafter, the writ petitioners ought to have resorted to Rule 8(1) of the abovesaid Rules, which mandates a notice in writing by the recruiting authority to the Sevak. Period of such notice shall be one month.

22. In the case on hand, there is no such notice, issued in terms of rule 8(1) of the Gramin Dak Sevak (Conduct and Engagement) Rules, 2011, whereas, the 1st respondent has been only directed to appear before the Superintendent of Post Office, Nilgiris Division, Udagamandalam and submit a written statement. As we have already observed tht the purpose of directing the 1st respondent to appear on 02.11.2012 and to submit a written statement, is totally absent. By a notice in writing, the writ petitioners ought to have stated the reasons and called upon the respondent to submit an explanation.

23. Though the writ petitioners have contended that the appointment is provisional in nature and can be terminated at any time, Gramin Dak Sevak (Conduct and Engagement) Rules, 2011, provide a procedure to be followed, before termination. Under Rule 8(1) of the said Rules, a notice in writing should be given and the period of such notice shall be one month. As per Rule 8 (2), in lieu of the notice, the 1st respondent shall be entitled to claim a sum equivalent to the amount of Basic Time Related Continuity Allowance plus Dearness Allowance as admissible for the period of the notice at the same rates at which she was drawing them immediately before the termination of his service, or, as the case may be, for the period by which such notice falls short of one month. When the order, dated 05.09.2012, is stated to have been modified, consequently, the 1st respondent is entitled to a notice in writing.

24. The Tribunal, by observing that there is a violation of principles of natural justice, has set aside the order, dated 05.09.2012, of the 2nd petitioner, with a direction that the 1st

respondent should be re-engaged, without prejudice to the powers of the writ petitioners to proceed, against the 1st respondent, for whatever reasons, which they might deem fit and proper and pass orders accordingly. In the light of the above discussion, we do not find that there is any material irregularity or illegality, in the order of the Tribunal, warranting interference.

25. In the result, the Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

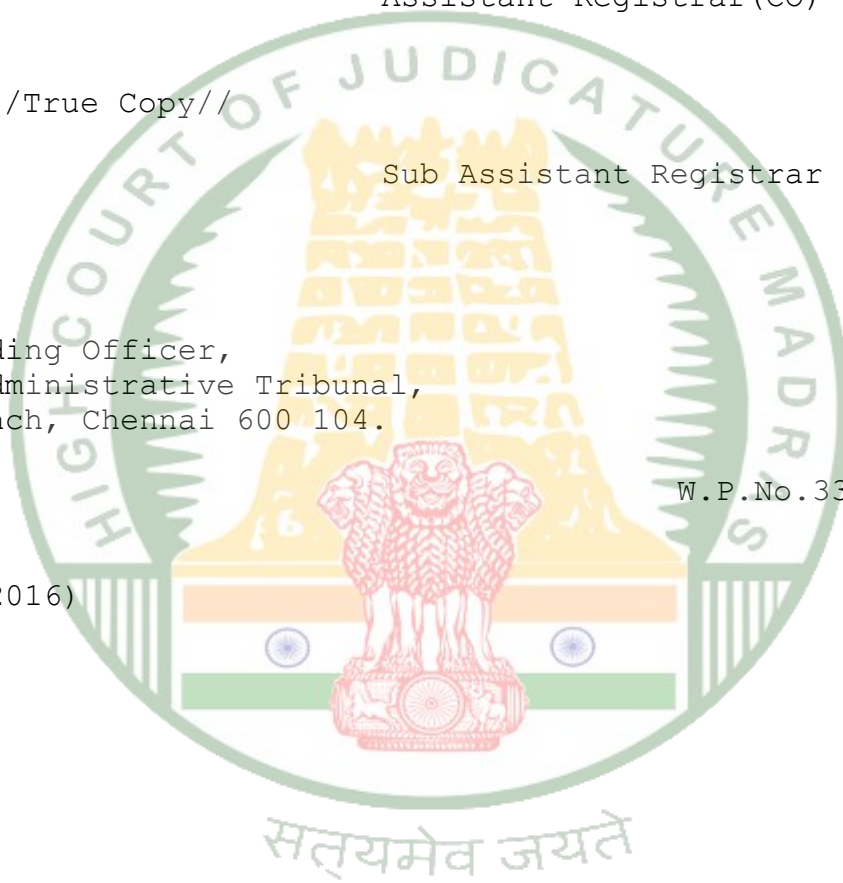
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To

The Presiding Officer,
Central Administrative Tribunal,
Madras Bench, Chennai 600 104.

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MG (CO)
CA(23/11/2016)



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