

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.01.2017
Delivered on: 13.02.2017

Coram

The Honourable Mr.Justice K.K.SASIDHARAN
and
The Honourable Mr.Justice V.PARTHIBAN

W.P.Nos.39039 ***of 2015** & 34130 of ***2014**
and M.P.No.1 of 2014

W.P.No.39039 of ***2015**

1. Ramkumar
2. Saroja

... Petitioners

versus

- 1 Union of India
Represented by its Secretary
Department of Posts,
Dak Bhavan, New Delhi-110 001.
- 2 The Chief Post Master General
Tamil Nadu Circle, Anna Salai,
Chennai-600 002.
- 3 The Superintendent of Post Offices,
Coimbatore Region,
Coimbatore.
- 4 The Registrar
Central Administrative Tribunal
Chennai-600 104

... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, to call for the records of the 4th respondent in its order dated 31.1.2014 made in O.A.No.1212 of 2011 quash the same and allow the original Application filed by the petitioners as prayed for.

For Petitioners : Mr.Menon Karthikmukundan

For Respondents : Mr.N.Vijaya Baskar, ACGSC-R1toR3
R4 : Tribunal

W.P.No.34130 of 2014:

- 1 Union of India
Represented by its Secretary
Department of Posts,
Dak Bhavan, New Delhi-110 001.
- 2 The Chief Post Master General
Tamil Nadu Circle, Anna Salai,
Chennai-600 002.
- 3 The Senior Superintendent of Post Offices,
Coimbatore Division,
Coimbatore 641 001. ... Petitioners

versus

1. Ramkumar
2. Saroja
3. Mathivanan
4. Jayanthi
5. The Registrar
Central Administrative Tribunal,
High Court Campus,
Chennai-600 104. ... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, to call for the records relating to the order dated 31.01.2014 of the Central Administrative Tribunal, Chennai Bench in Original Application No.1212 of 2011 and quash the same.

For Petitioners : Mr.V.Venkatesan, SCGSC

For Respondents : Mr.Menon Karthik Mukundan for R1-R2
R4-NS- Awarded
R5 : Tribunal
R3 : No Appearance

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COMMON ORDER

V.PARTHIBAN, J.

Both these Writ Petitions have been filed against the order passed by the Central Administrative Tribunal (in short, 'the Tribunal'), Madras Bench, dated 31.1.2014 in O.A.No.1212 of 2011.

2. Writ Petition No.*39039 of 2015 has been filed by two of the four unsuccessful applicants before the Tribunal and the other Writ Petition No.34130 of 2014 has been filed by the Union of India, against the same order passed by the learned Tribunal in the above said Original Application. Therefore, both the Writ Petitions are taken up together for final disposal by this common order.

3. For the sake of clarity, the parties to the litigation are hereinafter described as applicants and respondents.

4. The applicants have approached the Tribunal with the above said Original Application, seeking the following relief:

"(i) to direct the respondents to reinstate the applicants into service;

(ii) to regularize the services of the applicants with effect from their date of initial appointment with all attendant and consequential benefits."

5. According to the applicants, they were appointed as Post Masters with effect from March and May 2000 respectively on compassionate grounds and thereafter, their services continued uninterruptedly without being regularized in their cadre. At the time when they were initially appointed on compassionate grounds, they were subjected to regular selection and after having been found eligible, they came to be appointed against leave/short term/retirement vacancies despite the service of the applicants admittedly continued without any break. It appears that the applicants who were continued in service as Post Masters, were unjustly terminated by oral orders on 16.8.2011. In the circumstances, the applicants were constrained to approach the Tribunal, seeking the above said relief.

6. Before the Tribunal, it was contended on behalf of the applicants that they were regularly selected for appointment though in short-term/leave/retirement vacancy, but the Department having continued the service of the applicants for more than ten years without any break, ought to have regularized the service of the applicants particularly in view of the fact that they fulfilled all the requirements in terms of the Relax Recruitment Rules (RRR).

7. Resisting the claim of the applicants, the respondents contended that the applicants were only appointed against short term/leave/retirement vacancies and therefore, they cannot stake any claim for regular appointment and moreover, there were also no sanctioned vacancies for accommodating the applicants on regular basis. On behalf of the applicants, number of decisions

were cited and more particularly, it was brought to the knowledge of the Tribunal that similarly placed employees of the Postal Department, filed Original Applications, viz., O.A.No.862 of 2001, 1006 of 2001, etc., were allowed by the Tribunal vide its order dated 28.2.2002 granting the similar prayer. Against the this order, the Department filed Writ Petitions in W.P.Nos.38990 of 2002 ectc. before this Court which were also dismissed by common order dated 20.6.2007 by this Court. As against the orders passed by this Court, Special Leave Petitions came to be filed before the Hon'ble Supreme Court in Civil Appeal Nos.7771 and 7780 of 2009. The Hon'ble Supreme disposed of the appeals after recording the submissions made on behalf of the Department that the entire issue has been re-examined on humanitarian consideration, that in all 202 employees working in the Department against short term/leave/retirement vacancies would be accommodated against compassionate appointment vacancies for the years 2001 to 2009 in terms of the Department Guidelines. In view of the submission of the Department, the services of 202 employees were directed to be regularized by the Hon'ble Supreme Court. However, the employees were not entitled for payment arrears on account of such regularization, but their pay and pensionary benefits were protected. In the concluding paragraphs, the Hon'ble Supreme Court held that the findings recorded by the Tribunal as well as High Court on the issue, shall not be treated as a precedent for the purpose of any other case or cases that may be pending.

8. The order passed by the Hon'ble Supreme Court was also implemented by proceedings of the Department dated 30.8.2010. Following the order passed by the Hon'ble Supreme Court, similar applications seemed to have been filed before the Tribunal, pleading that they were also identically placed and entitled to regularization on par with 202 employees whose service came to be regularized. Those applications were also allowed and some of the employees who were unsuccessful before the Tribunal, had filed writ petitions before this Court and this Court also granted the relief as granted by the Hon'ble Supreme Court in respect of 202 employees who were covered under the order passed in Civil Appeal No.7773 of 2009, dated 30.7.2010, directing the Department to regularize their services on the same terms and conditions on which 202 similarly placed persons were regularized by order dated 30.7.2010. Number of Writ Petitions which were allowed by this Court granting similar relief, are enumerated herein below:

- i) W.P.No.22333 of 2011
- ii) W.P.Nos.6476 to 6478 of 2013
- iii) W.P.No.1829 of 2014

9. The orders passed by this Court in the above Writ Petitions were also implemented by the Department and the

reliefs were granted to those employees covered under the orders passed by this Court. In fact, in one such Writ Petition in W.P.No.16041 of 2014, this Court, by order dated 20.6.2014 has granted similar relief to 88 employees by confirming the order passed by the Tribunal granting the relief. As against that, the Department preferred SLP in Civil Appeal No.18992 of 2014 and the same also came to be dismissed by the Hon'ble Supreme Court vide order dated 8.12.2014.

10. While the matters stood thus, the learned Tribunal without taking note of the fact the similar orders were confirmed or passed by this Court earlier to the disposal of the O.As., has disposed of the present O.A. without granting the relief as prayed for by the applicants. The Tribunal, notwithstanding similar benefit extended to other similarly placed persons, has completely left it open to the Department to consider the case of the applicants on priority basis without giving any positive direction. The final direction passed by the Tribunal in para 19 of the order, is extracted herein below:

"19. The Applicants do not have a vested right in the appointment they are seeking. The law has been made very clear in the Constitution Bench judgment of the Hon'ble Supreme Court in Shankarsan Dash versus Union of India (1991) 3 SCC 47. It appears that for want of vacancies earmarked for compassionate appointment, that is 5% of vacancies under the direct recruitment quota, the Applicants and many others similarly placed candidates could not be appointed on regular basis. In view of the position set out in para 15 onwards, the Applicants cannot claim appointment/regularization as a matter of right. However, law is not the end but only a means to achieve the end of justice. It is not for perfection of theory but for realization of justice in a practical situation. It is not known whether the case of the Applicants was considered in each successive meeting of the Circle Relaxation Committee. Having engaged them (though only in leave/short term vacancies) for several years, the respondents ought to have given priority to the Applicants for absorption in regular (5% of direct recruitment) vacancies earmarked for compassionate appointment instead of terminating their engagement abruptly. The respondents are accordingly directed to consider the case of the applicants on priority basis for appointment in any existing or future vacancy in Group D in the Postal Department under the scheme of compassionate appointment."

As against the above, both the applicants and respondents stood before us.

11. Shri Karthik Rajan, learned counsel appearing for the writ petitioners in WP No.39039 of 2015 strenuously contended that the issue of regularization of the applicants is no more res integra since the same has been decided in favour of the employees in number of decisions rendered by the learned Tribunal as well as this Court, which attained finality particularly in the matter of SLP 16041 of 2014, wherein, the Hon'ble Supreme Court refused to interfere with the order passed by this Court and dismissed the SLP vide order dated 8.12.2014. Moreover, Shri Karthik Rajan further contended that the Department itself has implemented the orders passed by this Court in respect of other employees except the applicants herein. Therefore, in all fairness, the Department ought to have regularized the services of the applicants on their own, lest it would be construed that the Department's action in not regularizing the applicants would per se discriminatory and violative of Articles 14 and 16 of the Constitution.

12. On the other hand, the learned Standing counsel appearing for the Union of India in W.P. No.34130 of 2014 would contend that whatever direction issued by the Tribunal as found in para 19 extracted above, cannot be sustained in law and no priority need be given to the employees who were accommodated in the short term/leave/retirement vacancies. In fact, there were no sanctioned vacancies for accommodating the applicants in regular appointment.

13. We gave our anxious consideration to the submissions made on behalf of the parties and we have noticed that the issue has been concluded by several decisions of this Court and also confirmed by the Hon'ble Supreme Court and by which, number of similarly placed compassionate appointees were regularized and were granted similar reliefs as granted by the Hon'ble Supreme Court in its order dated 30.07.2010. As narrated above thereafter, number of decisions came to be rendered both by the Tribunal and this Court on the same issue while allowing the claims of the employees for regularization of their service from the date of their initial appointment of course without payment of any arrears, but protecting their pay and pensionary benefits. Therefore, we do not see any reason or justification so as to take a different view in the matter since these two applicants had been left out of the benefit of regularization which benefit was granted to hundred of employees. In view of this conclusion, we direct the Department to reinstate and regularize the services of the applicants forthwith with effect from their original appointment with all consequential benefits

except payment of any arrears on account of such regularization in terms of the orders passed by the Hon'ble Supreme Court in SLP No. 7773 of 2009. The said exercise shall be initiated and completed within four weeks from the date of receipt of a copy of this order.

In view of the above, the impugned order passed by the Tribunal in O.A.No.1212 of 2011, dated 31.1.2014 is modified to the above extent. Accordingly, the Writ Petition in W.P.No.39039 of 2015 is ordered.

In view of the conclusion arrived at in W.P.39039 of 2015, the Writ Petition filed by the Union of India in W.P.No.34130 of 2014 fails and it is therefore, dismissed.

Sd/-
Assistant Registrar(CO)
Dated:22/02/2017

*Corrected as per letter
dated 22/03/2017 and
made in W.P.No.39039 of 2015
and 34130 of 2014
Sd/-
Assistant Registrar(CCC)
Dated:28/03/2017

//True Copy//

Sub Assistant Registrar

- 1 The Secretary
Union of India
Department of Posts,
Dak Bhavan, New Delhi-110 001.
- 2 The Chief Post Master General
Tamil Nadu Circle, Anna Salai,
Chennai-600 002.
- 3 The Senior Superintendent of Post Offices,
Coimbatore Division,
Coimbatore 641 001.

4 The Registrar,
Central Administrative Tribunal,
Chennai-600 104.

+1cc to Mr.Menon Karthik Mukundan & Neelakandan, Advocate Sr.9157
+1cc to Mr.V.Venkatesan, Advocate Sr.8955
+1cc to Mr.N.Vijayabaskar, Advocate Sr.9261

W.P.Nos.39039 *of 2015 and
34130 of *2014

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srg 28/02/2017
srg 04/03/2017



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