

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 13.12.2017

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

W.P.No.38110 of 2016

R.Ramamurthy

.. Petitioner

Vs.

- 1.The Registrar,
Central Administrative Tribunal,
Chennai Bench, Chennai.
- 2.Union of India rep.by
the Director General,
Department of Posts, New Delhi.
- 3.The Postmaster General,
Central Region,
Tiruchirappalli Head Office,
Trichy-620 001.
- 4.The Senior Superintendent of Post Office,
Tiruchirappalli Head Office,
Trichy-620 001.
- 5.The Assistant Superintendent of Post Office,
Trichy West Sub Division,
Office of Teppalukam P.O.,
Trichy-620 002.
- 6.The Branch Postmaster,
Manikandam Post Office,
a/w E.Pudur S.O., Trichy-620 012.

.. Respondents

Petition filed under Article 226 of the Constitution of India, for issuance of a writ of Certiorarified Mandamus to call for the records relating to the order dated 27.07.2016 made in O.A.No.1514 of 2014 by the Hon'ble Central Administrative Tribunal, Chennai and quash the same and consequently direct petitioner's regularisation from the date of his appointment in 2003.

For Petitioner : Mr.K.V.Ananthakrishnan
For Respondents : Mr.V.Balasubramanian
for R2 to R6

ORDER
(Order of the Court was made by
HULUVADI G.RAMESH, J.)

The case of the petitioner is that he was initially appointed as EDSO during 2003 and thereafter till 2014 he was working in the office of the respondent Department in various capacities on a regular basis, eventhough with breaks. He studied up to 10th Standard. He has put in more than 10 years of service as Postman GDS (MD). While so, the third respondent herein invited applications on 01.04.2014 for the post of GDS (MD), Manikandam and the said post was reserved for OBC category. The petitioner gave a representation dated 23.04.2014 seeking to regularise his service in the said post of GDS (Gramin Dak Sevak), in the existing vacancy by considering the service rendered by him from 2003 to 2014, but the third respondent recruited a new person to the said post, which being a permanent post. The contention of the petitioner is that he gave a representation dated 23.04.2014 to consider his name for the said permanent post, but he was orally terminated from service on 25.04.2014 and thereafter, his representation was rejected by proceedings dated 06.06.2014.

2.With the above background, the petitioner filed an application before the first respondent Tribunal in O.A.No.1514 of 2014 and the Tribunal, in turn, issued a direction to the Department to consider the case of the petitioner sympathetically and to accommodate him as outsider as a stop gap arrangement in the vacant posts of GDS as and when services of such outsiders are required.

3.Challenging the said order passed by the Tribunal, the petitioner has come up with the present writ petition.

4.The learned counsel for the petitioner has submitted that even though the petitioner worked as a temporary employee, he was engaged by the Department in a duly sanctioned permanent post and hence, when the vacancy fell in the permanent post, the Department ought to have considered the petitioner and regularised his services in the said post with effect from the date of his first and initial appointment. It is also his submission that the Tribunal, having given a finding that the respondent Department had availed the services of the petitioner for more than 11 years in different permanent posts, ought to have considered the petitioner for regularisation of his

service, at the time when recruitments were taken up for the permanent posts. Stating so, he prayed for quashing the order passed by the Tribunal and to issue directions to the respondent Department to regularise the services of the petitioner from the year 2003.

5.A counter has been filed on behalf of the respondent Department in which it is stated that whenever vacancies arise in Gramin Dak Sevak Posts ("GDS Posts" in short), regular appointment could not be made immediately, as specific set of recruitment rules are prescribed for filling up such posts. The vacant GDS posts are to be filled up by calling for applications through Employment Exchange and notifying the same. In such circumstances, it is stated that outsiders are placed temporarily as stop gap arrangement to manage the duties of the vacant posts till regular appointments are made. It is stated that the petitioner was never appointed on a regular basis at any point of time. The petitioner was neither appointed after following due process of selection as per the recruitment rules nor issued with appointment order or any other order by the competent authority. The petitioner was placed only as an outsider to manage the duties of vacant GDS posts temporarily, as a stop gap measure. Reiterating the submissions made in the counter, the learned counsel for the respondents 2 to 6 prayed to dismiss the writ petition.

6.Heard the learned counsel on either side and perused the materials available on record.

7.When this writ petition came up before this Court on 28.04.2017, it was represented by the counsel appearing for the Department that the Superintendent of Post Office, Trichy, by order dated 27.04.2017, permitted the petitioner to continue as Extra Departmental Staff in Ponnagar Sub Post Office, Tiruchirappalli. Thereafter, by order dated 19.06.2017, this Court recorded the submission of the learned counsel for the petitioner that the service of the petitioner would be continued till the disposal of this writ petition and adjourned the matter to 28.08.2017.

8.It appears that the petitioner has been working in the respondent Department only on a temporary basis and he was never engaged on a regular basis by the respondent Department. The process of engagement of Gramin Dak Sevak is subject to the provisions of instructions and guidelines specified in the Department of Posts Gramin Dak Sevak (Conduct and Engagement) Rules, 2011 and the sole criterion for selection of the posts of all categories of Gramin Dak Sevak would be on merit, ie., marks obtained in the matriculation or equivalent examination. However, as per the undertaking given before this Court, the

petitioner was allowed to work in the Gramin Dak Post purely as an outsider as a stop gap arrangement and allowances are paid as per the eligibility meant for outsiders and as per the guidelines of the Director of Accounts (Postal), Tamil Nadu Circle, Chennai vide Letter No.53/CIS/AU-I/GDS dated 04.04.4013.

9.Today, the learned counsel for the petitioner has represented before this Court that the respondent Department has provided employment to the petitioner as GDSMP Staff only on temporary basis and he is treated as daily wage earner and the wages are being paid only for the number of days worked. An additional affidavit has also been filed to that effect.

10.At this juncture, it would be appropriate to refer to the judgment of the Hon'ble Supreme Court in the case of Secretary, State of Karnataka and others v. Umadevi and others, reported in (2006) 4 SCC 1. The relevant portions of the said judgment are extracted hereunder:

"The Union, the States, their departments and instrumentalities have resorted to irregular appointments, especially in the lower rungs of the service, without reference to the duty to ensure a proper appointment procedure through the Public Service Commission or otherwise as per the rules adopted and to permit these irregular appointees or those appointed on contract or on daily wages, to continue year after year, thus, keeping out those who are qualified to apply for the post concerned and depriving them of an opportunity to compete for the post. It has also led to persons who get employed, without the following of a regular procedure or even through the backdoor or on daily wages, approaching Courts, seeking directions to make them permanent in their posts and to prevent regular recruitment to the concerned posts."

"There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules."

11.Applying the principles enunciated in the above judgments of the Hon'ble Supreme Court to the case on hand, it is clear that the petitioner herein cannot claim as a right to be absorbed in service, since he has not been selected in terms of the relevant recruitment rules. Thus, the prayer sought for by the petitioner cannot be granted.

12.However, this Court is of the considered opinion that the petitioner could be given some weightage when he applies for any regular posts if any, that may arise in future, in the respondent Department. Till such time, the Department shall continue to employ the petitioner, as is existing as on date, in accordance with law.

13.The writ petition is disposed of accordingly. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

KM

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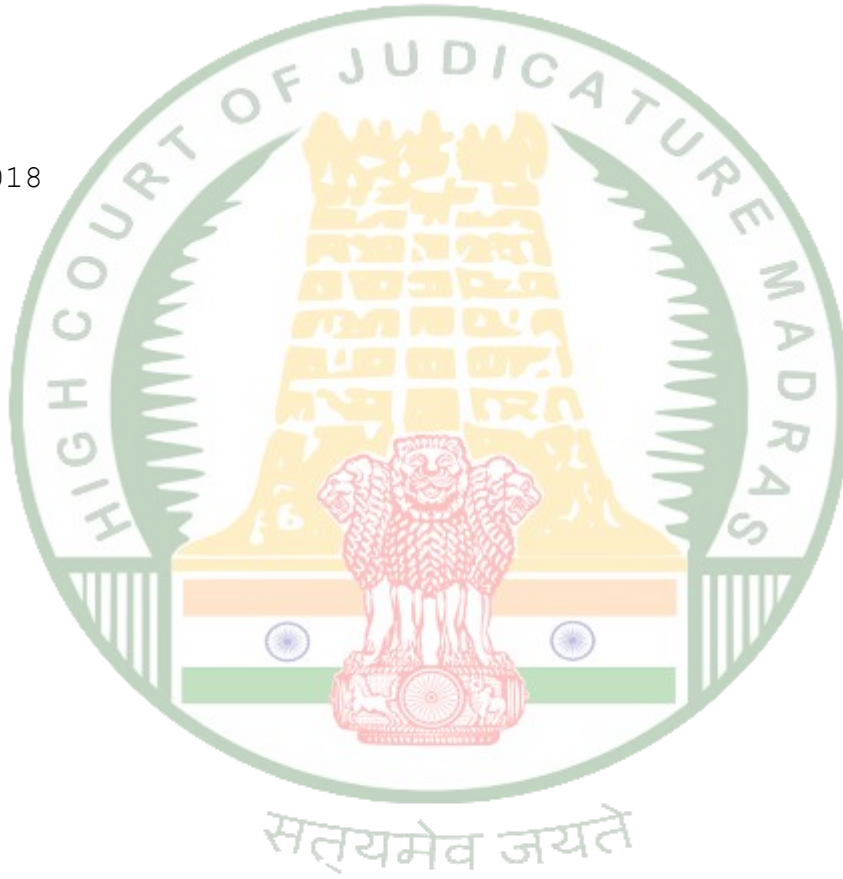
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+1 cc to M/s.V.Balasubramaniam Advocate sr 88873
+1 cc to M/s.K.V.Ananthakrishnan Advocate sr 89591

W.P.No.38110 of 2016

mr(co)
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