

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2018

CORAM :

THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.6363 of 2018 &

W.M.P.No.7901 of 2018

1. Union of India
Rep. by the Divisional Railway Manager
Southern Railway
Divisional Office
Personal Branch, Madurai
 2. The Divisional Personnel Officer
Assistant Personal Officer
Southern Railway, Madurai
- ... Petitioners

v.

1. P.Subramani
 2. The Registrar
Central Administrative Tribunal
Madras Bench
- .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent pertaining to O.A.No.310/01638/2015 and orders passed thereon dated 22.03.2017 and quash the same and proper in the circumstances of the case.

For Petitioners : Ms.T.P.Savitha
Standing Counsel

For Respondents : Mr.S.Meenakshi Sundaram
- for R1
R2-Tribunal

ORDER
(Order of the Court made by M.DURAISWAMY,J)

The petitioners have filed the above Writ Petition to issue a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent pertaining to the order passed in O.A.No.310/01638/2015, on the file of the Central Administrative Tribunal and consequently direct the petitioners to consider and place the 1st respondent under Old Pension Scheme, as it was extended to those who were appointed before 01.01.2004.

2. The brief case of the parties necessary for the disposal of the writ petition is as follows:-

(i) The 1st respondent submitted his application for re-engagement as casual labourer. Pursuant to which, the 2nd respondent issued an order of appointment dated 29.08.1988. By letter dated 27.11.1989, the 2nd respondent informed the 1st respondent that he would be engaged as casual labourer for the period from 25.12.1989 to 24.03.1990 i.e. for a period of 90 days and his services will be terminated automatically on the expiry of the 90 days period and no further notice will be served for the termination.

(ii) According to the petitioners, on 13.10.2004, an order of appointment was issued to the 1st respondent along with 5 others of retrenched casual labourers. On 26.02.2015, the 1st respondent filed the Original Application before the Central Administrative Tribunal and claimed that he would be placed in the Old Pension Scheme.

(iii) By order dated 22.03.2017, the Tribunal allowed and directed the petitioners to consider the claim of the 1st respondent afresh and to take a decision. Against this order, the Union of India has filed the above writ petition.

(iv) It is the case of the 1st respondent that he got selected as per the Notification dated 25.03.2003, i.e., before the date of commencement of the New Pension Scheme, i.e., 01.01.2004, came into operation. Further, the 1st respondent contended that he had produced the Community Certificate on 01.04.2003 itself during the screening. However, the petitioners contended that the 1st respondent had not produced the Community Certificate for the age relaxation on the date of screening on 09.04.2003 and he had produced the Community Certificate dated 25.02.2004 after one year, i.e. only on 19.03.2004 and after the conduct of the medical examination, the order of appointment was issued on 13.10.2004. Admittedly, the

New Pension Scheme came into operation on 01.01.2004.

3. The learned counsel appearing for the 1st respondent produced a Circular dated 29.10.2004 issued by the Government of India, Ministry of Railways, wherein in paragraph No.2 it has been stated as follows:-

"2. The issue has been examined by Board and it has now been decided that substitutes who got temporary status prior to 01.01.2004 but regularized/absorbed after 01.01.2004 and after regularization, if the date of appointment is prior to 01.01.2004 in terms of provision of Board's letter No.E(NG) II/90SB/Master Circular dated 29.01.1991 (M.C. No.20/91) and para 6 of letter No.E(NG) II/2008/SB/SR/15, dated 17.09.2010, then they may be covered under Old Pension Scheme."

4. From the above referred Circular, it is clear that the substitutes, who got temporary status prior to 01.01.2004 but regularized/absorbed after 01.01.2004 and after regularization, if the date of appointment is prior to 01.01.2004 in terms of provision of Board's letter dated 29.01.1991 and para 6 of the letter dated 17.09.2010, they may be covered under Old Pension Scheme.

5. The learned counsel appearing for the petitioners relied upon a Circular dated 31.12.2003 in respect of Old Pension Scheme for new entrants to Central Government Service including Railway Service. The said Circular applies to new entrants. Whereas, the Circular dated 29.10.2004 clarifies that the substitutes, who got temporary status prior to 01.01.2004 but regularized after 01.01.2004 and after regularization, if the date of appointment is prior to 01.01.2004, then they may be covered under Old Pension Scheme.

6. The learned counsel appearing for the 1st respondent submitted that the Circular dated 29.10.2004 is applicable to the case of the 1st respondent. Further the learned counsel submitted that the 1st respondent has produced a Community Certificate for age relaxation and he cannot be denied the benefits of Old Pension Scheme on the ground that he was appointed after 01.01.2004.

7. The Tribunal, taking into consideration all these aspects, rightly disposed of the Original Application by giving a direction to the petitioners herein to consider the claim of the 1st respondent afresh and take a decision. It is pertinent to note that the Tribunal had only directed the petitioners to consider the case of the 1st respondent and pass orders afresh and had not given any positive direction to the petitioners.

8. In these circumstances, we do not find any ground to interfere with the order passed by the Tribunal. The Writ Petition is devoid of merits and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

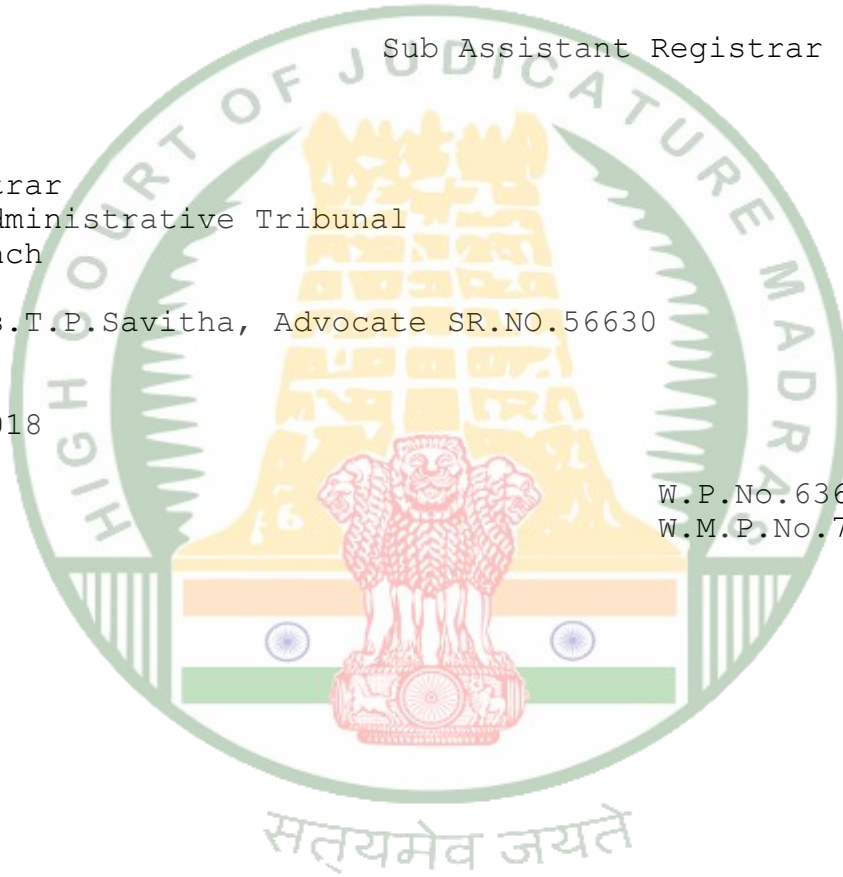
Rj
To

The Registrar
Central Administrative Tribunal
Madras Bench

+1cc to Ms.T.P.Savitha, Advocate SR.NO.56630

GJ(CO)
sm:31.8.2018

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