

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2018

CORAM:

The Hon'ble MR.JUSTICE HULUVADI G.RAMESH

AND

The Hon'ble MR.JUSTICE S.S.SUNDAR

W.P.No. 4141 of 2016

And

W.M.P.No. 3471 of 2016

1. The Union of India
Rep. by its General Manager
Southern Railway
Park Town, Chennai - 3.
2. The Chief Personnel Officer
Southern Railway
Park Town, Chennai - 600 003.
3. The Divisional Personnel Officer
Divisional Office, Personnel Branch
Southern Railway, Salem.
4. The Assistant Personnel Officer
Divisional Office, Personnel Branch
Southern Railway, Salem. ... Petitioners

Vs.

1. S.Jacobraj
2. The Registrar
Central Administrative Tribunal
Madras Bench, Chennai - 600 104. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records relating to O.A.No. 451 of 2012 on the file of the Central Administrative Tribunal, the second respondent and quash the order dated 07.04.2015.

For petitioners : M/s. A.Sri Jayanthi

For 1st Respondent: Mrs. Y.Kavitha
for M/s. Giridhar & Sai

ORDER

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

The brief facts that are necessary for the disposal of the Writ Petition are as follows:-

The first respondent in this Writ Petition was engaged as Project Casual Labour on daily rate of wages and was granted temporary status as Khalasi with effect from 01.01.1984. The date of temporary status as Khalasi was advanced to 01.01.1983 as per letter of Railway Board dated 11.09.1986 and the monthly pay of the first respondent was fixed at Rs.196/- in scale of pay of Rs.196-232 with effect from 01.01.1983.

2. According to the petitioners, a temporary status attained casual labour is not a regular railway servant and the first respondent can become a regular railway servant only after screening and absorption by Selection Board against regular vacancies of Group "D" posts such as Khalasi, Gangman, etc.

3. Since the first respondent was granted only a temporary status as Khalasi, it is stated that the first respondent knew well that the temporary status attained casual labours like the first respondent cannot claim any right for absorption on regular establishment unless they are selected through Selection Board for Class IV posts. When the fourth pay commission was implemented with effect from 01.01.1986, the first respondent's pay was also fixed. The first respondent was utilised by the department as Gangman for Pway Track Maintenance work by the construction organisation from 10.07.1988. As per the instruction of the Chief Personnel Officer, Southern Railway, Chennai, dated 07.10.1988, it is stated by the petitioner that the pay of the first respondent was wrongly fixed at Rs.859 in the pay scale of Rs.775-1025 with effect from 10.07.1988 instead of 823 from the date when he was utilised as Gangman in Pway Track Maintenance work.

4. It is the specific case of the petitioner that the pay of the first respondent was erroneously and by mistake fixed at Rs.859/- under Rule 1313 (1) (a) (i) R-II taking it as a promotion from the scale of Rs.750-940 with effect from 10.07.1988. It is stated by the petitioner that the first respondent was screened and empaneled for appointment as Gangman in the pay scale of Rs.775-1025 in Palghat division only in the year 1989. After such empanelment, it is stated that the first respondent was relieved on 21.03.1989 to report to Permanent Way Inspector, Karur on 22.03.1989. Based on the above, the first respondent's

pay was increased to Rs.871/- duly granting annual increment in the scale of Rs.775/- - Rs.1025/- with effect from 01.07.1989. The first respondent was promoted as Senior Gangman with effect from 01.03.1993 against Cadre Restructuring vacancy and his pay was fixed at Rs.950/- in the scale of pay of Rs.800-1150 with effect from 01.03.1993. On implementation of V Pay Commission recommendations, the pay of the first respondent was fixed at Rs.3040/- in the scale of pay of Rs.2650-4000 with effect from 01.01.1996. The next increment was given at Rs.3105/- with effect from 01.03.1996. The first respondent was thereafter promoted as Senior Store Watchman and his pay was fixed at Rs.3875/- in the pay scale of Rs.2750-4000 with effect from 08.04.2005.

5. It is stated by the petitioners that as per Rule 1313 (FR22) (1)(a)(i) R-II, pay at a higher stage can be fixed only when a railway servant holding a post in a substantive or temporary or officiating capacity is promoted in a substantive, temporary or officiating capacity to another post carrying duties and responsibilities of greater importance than those attached to the post held by him. It is further stated by the petitioners that the first respondent became a regular railway servant only on appointment as Gangman with effect from 22.03.1989 after screening and empanelment for such regular absorption by the Screening Committee. It is further stated that hence it became necessary for the Divisional Office, Southern Railway, Palghat to rectify the error in fixation of pay. It is stated that the pay of the first respondent was re-fixed at Rs.823/- with effect from 10.07.1988 by Memorandum dated 09.12.2005 duly rectifying the error in fixing the pay of the first respondent. Treating this as over payment, action was initiated to recover the amount of Rs.30,950/- by order dated 12.05.2011 in 60 monthly installments. Challenging the order, the first respondent has filed O.A.No. 451 of 2012 on the file of the Central Administrative Tribunal, Madras Bench, Chennai, praying for a direction to restore and re-fix the pay of the first respondent on par with similarly placed persons (Shri.S.Rajaratnam and others) and to grant arrears of pay and allowances by quashing the impugned order dated 12.05.2011 passed by the fourth petitioner.

6. The Tribunal relying upon the order passed by the Tribunal in O.A.No. 1424 of 2010 dated 12.03.2013 wherein similar issue had been dealt with allowed the Original Application. The order passed in Original Application in O.A.No. 1424 of 2010 dated 12.03.2013 was on the basis of a Judgment of the Kerala High Court in O.P.No. 27604 of 2012. The Tribunal directed the respondents in O.A.No. 1424 of 2010 to restore and re-fix the pay of the applicants therein at Rs.835/- in the scale of Rs.775-1025 and to pay the consequential

benefits. The Tribunal has referred to the fact that the order of the Tribunal in the connected proceedings had been implemented and quashed the impugned order dated 12.05.2011 passed by the fourth petitioner. The Tribunal has directed to restore and re-fix the pay of the first respondent herein on par with similarly placed persons and grant arrears of pay and all other consequential benefits within a period of three months from the date of receipt of a copy of this order.

7. Challenging the order of the Tribunal, the petitioners herein has filed the above Writ Petition raising the following grounds:-

(a) the salary of the first respondent was re-fixed from Rs.859/- per month to Rs.823/- per month on 09.12.2005. The first respondent did not question the re-fixing of salary and there was no representation from the first respondent till the order was passed by the fourth respondent on 12.05.2011.

(b) The first respondent became regular railway servant only when he was appointed as Gangaman with effect from 22.03.1989 after screening and empanelment for such regular absorption by the Screening Committee. Hence, as per the rules of Indian Railway Establishment Code Vol.-II, the first respondent is not entitled to a higher pay scale. When a higher pay was fixed by mistake, it is always open to the petitioners to revise the salary fixed it according to the rules and the Tribunal has failed to look into this important aspect.

(c) The Tribunal has allowed the Original Application by following the earlier orders dated 12.03.2013 and 28.03.2014 passed in O.A.No. 1424 of 2010 and O.A.No. 620 of 2011 on the file of Central Administrative Tribunal, Madras Bench. The Writ Petition filed by the Railway Administration in W.P.No. 9798 of 2015 as against the order of the Tribunal in O.A.No. 620 of 2011, is pending before this Court. Hence, the earlier order in O.A.No. 620 of 2011 cannot be a precedent.

(d). The Tribunal has failed to note that the facts relating to the proceedings in O.P.No. 27604 of 2002 is entirely different and it cannot be made applicable in the present case.

8. The learned counsel for the petitioners has not substantiated any of the grounds raised by the petitioners on merits. The relevant rules are not placed before this Court.

9. The first respondent has filed a detailed counter. Before the Central Administrative Tribunal, Ernakulam, a similar application was filed in O.A.No. 1396 of 1999. As a matter of fact, yer another application in O.A.No. 895 of 2002 and batch

have been filed by S.Rajaratnam and M.Narayana Perumal, who also suffered similar reduction of pay, before the Hon'ble Central Administrative Tribunal, Ernakulam Branch. O.A.No. 1396 of 1999 though was dismissed by the Central Administrative Tribunal, Ernakulam, the applicants therein have filed O.P.No. 27604 of 2002 before the High Court of Kerala. The High Court of Kerala has allowed O.P.No. 27604 of 2002 and granted the relief to the applicants in O.A.No. 1396 of 1999. Based on the Judgment of Kerala High Court in O.P.No. 27604 of 2002, several matters have been disposed of by the Central Administrative Tribunal in Ernakulam and by the Tribunal in Chennai.

10. These facts are not in dispute. When the order passed by the Tribunal in respect of similarly placed persons having implemented by the petitioners herein, the bona fides of the petitioners to pursue this Writ Petition is doubtful.

11. Admittedly, the fourth petitioner has passed the order in the year 2011 for recovery after several years. After allowing the first respondent to draw salary on par with similarly placed persons, the fourth petitioner without application of mind has passed the order despite the fact that the issue has been finally settled by the Central Administrative Tribunal based on the Judgment of Kerala High Court confirming the order of the Central Administrative Tribunal at Ernakulam. When these facts are not in dispute. This court do not find any merits to entertain this Writ Petition.

12. Accordingly, this Writ Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vsg

To

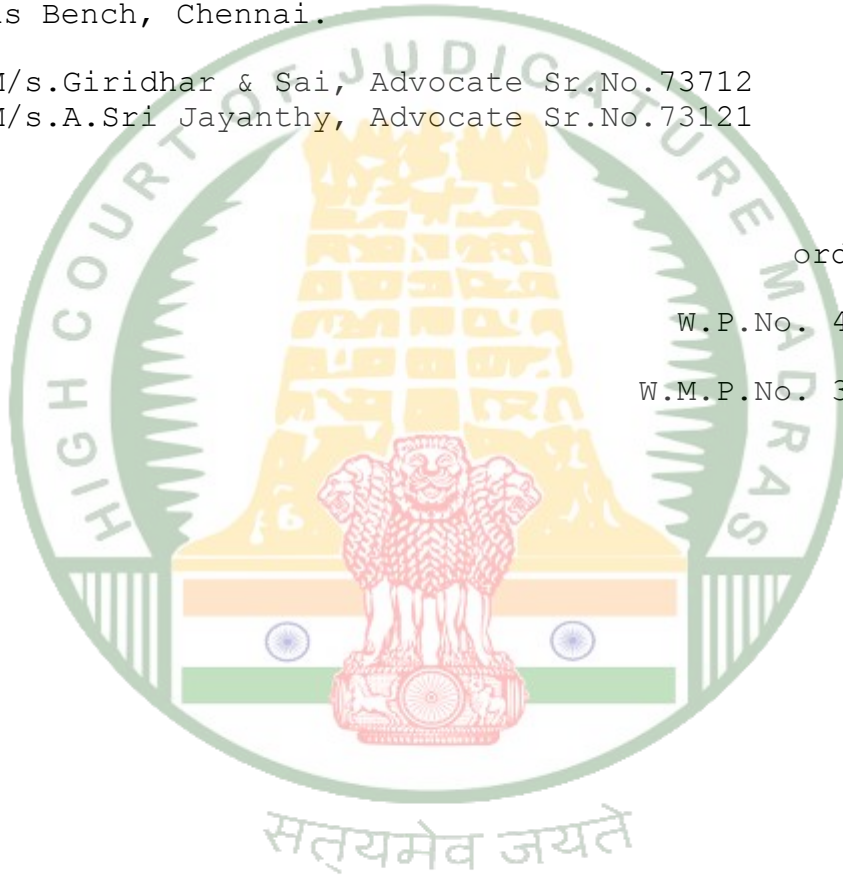
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Madras Bench, Chennai.

+1 cc to M/s.Giridhar & Sai, Advocate Sr.No.73712
+1 cc to M/s.A.Sri Jayanthi, Advocate Sr.No.73121



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