

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 11.04.2019

PRONOUNCED ON :22.04.2019

CORAM

THE HON'BLE Mr. JUSTICE M.VENUGOPAL
And
THE HON'BLE Mr. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.15410 of 2015 and
M.P.No.2 of 2015

M.Krishnamoorthy

.. Petitioner

V.

1.The Registrar,
Central Administrative Tribunal,
Chennai Bench, Chennai - 104.

2.The Union of India,
Rep. By its Senior Superintendent of Post Offices,
Pondicherry Division,
Pondicherry - 605 001.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the entire records relating to the impugned order passed by the 1st Respondent in O.A.No.310/01144/2014, dated 06.04.2015 whereby confirming the order passed by the 2nd Respondent in No.C - 573, dated 03.04.2012 and quash the same and consequently direct the 2nd Respondent to sanction the pension and disburse the same to the Petitioner.

For Petitioner : Mr.C.Prakasam

For 1st Respondent : Tribunal

For 2nd Respondent : Mr.V.Balasubramanian, SPC

O R D E R

M.VENUGOPAL, J.

The Petitioner was appointed as Extra Delivery Agent on 16.02.1971 in the Postal Department. Later, he was required to work as ED Packer. On 24.09.1998 he was promoted as Postman and placed to work at Marakkanam Post Office. After discharge of duties as Postman, he was permitted to retire from service on 30.06.2007.

2.The plea of the Petitioner is that the 2nd Respondent/Union of India, represented by its Senior Superintendent of Post Offices, Pondicherry Division, Pondicherry was not inclined to sanction pension to him, based on the reason that he had not completed 10 years of service in the post of Postman and refused to take into account the service viz., ED DA service. He served as Extra Delivery Agent from the year 1971 onwards, the total period of service was 26 years and 7 months.

3.The Petitioner made a written representation before the 2nd Respondent on 03.04.2012, since the 2nd Respondent had not taken into account the service of Postman. Because of the reason that similarly placed Postmen are receiving pension, he approached the 1st Respondent/Tribunal and filed O.A.No.310/01144/2014 against the impugned order of the 2nd Respondent dated 03.04.2012. He relied upon the order passed in O.A.No.1264 of 2001, dated 18.04.2002 and O.A.No.48 of 2013 dated 09.06.2014 before the 1st Respondent/Tribunal. As a matter of fact, the Applicants in the aforesaid two OAs are similarly placed like the Petitioner, who had not completed 10 years of service in the post of Postman at the time of retired from service.

4.According to the Petitioner, the Applicants in the aforesaid two Original Applications before the 1st Respondent/Tribunal prayed for sanction of pension to them by taking note of the services rendered in the post of Extra Delivery Agent and the Tribunal on 09.06.2014 allowed the Original Application by quashing the order of the 2nd Respondent. Further, the Tribunal had also directed the 2nd Respondent to take into account the shortfall period of service from the ED employment for the purpose of determination of qualifying service of ten years i.e., the Extra Delivery Agent Service also should be taken into account while computing ten years of service. However, the 1st Respondent had not considered the same and rejected the Original Application in O.A.No.310/01144/2014, dated 06.04.2015.

5.Being dissatisfied with the order dated 06.04.2015 in O.A. No.310/01144/2014 passed by the 1st Respondent/Tribunal, the Petitioner has filed the present Writ Petition before this Court contending that the 1st Respondent/Tribunal had failed to appreciate the fact that the Petitioner as an Additional Delivery Agent for more than 26 years and 7 months had rendered service and while computing services as Postman, since the promotion given by the 2nd Respondent whose a belated one and for that, the Petitioner cannot be blamed for any reason for whatsoever.

6.The Learned Counsel for the Petitioner contends that the 2nd Respondent should have considered the Petitioner's promotion at an early stage and for his belated promotion, he is not responsible.

7.The Learned Counsel for the Petitioner comes out with a plea that the 1st Respondent had not accepted the fact that when the High Court as well as the Hon'ble Supreme Court had considered the plight of similarly placed Employees services.

8.In short, the Petitioner has sought for quashing of the impugned order dated 06.04.2015 passed by the 1st Respondent/Tribunal in O.A.No.310/01144/2014 and resultantly prayed for passing of an order by this Court in directing the 2nd Respondent to sanction the pension and disburse the same to him.

9.Conversely, it is the submission of the Learned Counsel for the 2nd Respondent that the Writ Petitioner was initially appointed as Extra Department Delivery Agent (now termed as Gramin Dak Sevak), Athipattu Branch Office Account with Nallanpillaipetral Sub Office under Pondicherry Postal Division with effect from 16.02.1971. Later he worked as Gramin Dak Sevak Mail Carrier, Nallanpillaipetral Sub Office from 01.02.1979 to 23.09.1998.

10.It is represented on behalf of the 2nd Respondent that resting upon the Petitioner's length of service, he was appointed as Postman, Marakkanam Sub Office with effect from 24.09.1998. His date of birth is 08.06.1947. He retired from service on 30.06.2007 afternoon on his attaining the age of 60 years. Moreover, the total service of the Petitioner in Postman cadre from 24.09.1998 to 30.06.2007 worked out to as 8 years 8 months and 27 days after deducting the 13 days period [from 05.12.2000 to 17.12.2000] for having participated in the strike and was treated as 'Dies-non'.

11.The Learned Counsel for the 2nd Respondent contends that the Petitioner was not eligible for pension since he had not completed 10 years of qualifying service, as per Rule 49 of the Central Civil Services (Pension) Rules, 1972, service gratuity of Rs.80,283/- and Retirement gratuity of Rs.40,142/- was sanctioned to him.

12.The Learned Counsel for the 2nd Respondent points out that the Petitioner, after a lapse of nearly 3 years after retirement, had projected representations dated 03.05.2010, 05.08.2010 and 02.09.2011 to the 2nd Respondent mentioning the order of the Hon'ble High Court in W.P.No.45465 of 2002 dated 04.10.2007 in the case of M.R.Palanisamy and prayed for sanction of minimum pension in relaxation of Rule 88 of the Central Civil

Services (Pension) Rules, 1972.

13. Expatiating his contention, the Learned Counsel for the 2nd Respondent takes a plea that there is no provision on Central Civil Services (Pension) Rules, 1972 to give weightage to the service rendered as Extra Departmental Delivery Agent (Gramin Dak Sevak) for reckoning qualifying service for grant of pension and the Hon'ble High Court had observed in the order in W.P.No.45465 of 2002 was confined only to the Respondent in Writ Petition viz., M.R.Palanisamy which should not be cited as precedent for others to follow.

14. The Learned Counsel for the 2nd Respondent brings it to the notice of this Court that a Reply dated 07.02.2012 and 03.04.2012 was given to the Petitioner by the 2nd Respondent informing of his inability for pension for not satisfying the condition of 10 years of qualifying service, in Postman cadre.

15. The Learned Counsel for the 2nd Respondent with vigour points out that the total service of the Petitioner in Postman cadre was 8 months and 24 days as against the minimum qualifying service of 10 years required for considering pensionary benefits and that the Petitioner, in reality, had served in Postman cadre for 8 years 9 months 7 days.

16. The Learned Counsel for the 2nd Respondent projects an argument that as per erstwhile Postman Recruitment Rules, there was provision for Selection and Appointment for Postman cadre based on Seniority in GDS (EDA) posts. However, on appointment in Postman cadre, the regular departmental pensionable service commences only from such date of appointment and in the present case, the Petitioner was appointed as 'Postman' on 24.09.1998 and the date of commencement of service reckonable for pension is only from 24.09.1998. Therefore, it is the categorical plea of the 2nd Respondent that the Petitioner had not specified the minimum service condition of 10 years as on 30.06.2007.

17. The Learned Counsel for the 2nd Respondent draws the attention of this Court that to Rule 14(1) of CCS (Pension) Rules, 1972 in and by which the service of a Government Servant shall not qualify unless his duties and pay are regulated by the Government and as per Rule 14(2) of the Rules, the service does not include service in a 'Non-Pensionable Establishment'. Continuing further, as per Rule 6 of GDS (C&E) Rules, GDS shall not be entitled to any pension. Therefore, it is the contention of the 2nd Respondent that the service rendered by the Petitioner in GDS post cannot be termed as 'Service under Pensionable Establishment'.

18.The Learned Counsel for the 2nd Respondent submits that citing the order dated 19.07.2000 of the Hon'ble Supreme Court in the case of Dhyani Singh and others V. State of Haryana, a similar claim was dismissed by the Tribunal, Ernakulam Bench in O.A.No.692 of 2011 by an order dated 30.03.2012. The said O.A. was filed by M.Podiyamma V. Superintendent of Post Offices, Pathanamthitta Division. Further, in the order dated 18.11.2011, similar claims in O.A.No.880 to 884 of 2010 were dismissed by the Tribunal. On 04.07.2012, the Tribunal had dismissed O.A.No.983 of 2011 by making an observation that the service rendered in GDS post cannot be counted for the purpose of Pension. Besides this, in O.A.No.940 of 2012, the Tribunal by means of an order dated 10.09.2014 had dismissed the similar claim filed by one Munusamy.

19.The Learned Counsel for the 2nd Respondent seeks in aid of the Rule 4 of the P & T Extra Department Agents (Conduct and Service) Rules, 1964 which enjoins that 'the employees shall not be entitled to any pension'.

20.The Learned Counsel for the 2nd Respondent adverts to Rule 14(2) of the CCS (Pension) Rules, 1972 which says that 'for the purposes of sub-rule (1), the expression 'service' means service under the Government and paid by the that Government form Consolidated Fund of India or a local fund administered by that Government, but does not include serviced in a non-pensionable establishment unless such service is treated as qualifying service by that Government.'

21.The Learned Counsel for the 2nd Respondent brings it to the notice of this Court that the Department had earlier considered the issue of formulation of a Scheme for the purpose in March 2011 but it was decided that there was no need to formulate a Scheme as such and 'to deal each such individual case separately under Rule 88 of the Central Civil Services (Pension) Rules, 1972 as is being done now'. However, the Department, in the light of Courts directions and advise of Department of Pension & Pensioners' Welfare, now felt a need to take a Uniform Policy Decision regarding grant of pension to employees having less than 10 years of service.

22.The Learned Counsel for the 2nd Respondent comes out with an argument that by virtue of the introduction of New Pension Scheme effective from 01.01.2004, all entrants to Government Service on or after this date ceased to be covered by Central Civil Services (Pension) Rules, 1972 and were mandatorily covered by the New Pension Scheme. As such, 'Gramin Dak Sevak' absorbed in regular departmental posts on or after 01.01.2004 also ceased to be governed by Central Civil Services (Pension)

Rules, 1972. Indeed, the present issue is confined only to such cases where the Gramin Dak Sevak were absorbed in departmental posts before 01.01.2004.

23. It is represented on behalf of the 2nd Respondent that the Postal Services Board in its meeting on 30.09.2013 considered the aspect of granting pension to Gramin Dak Sevak (erstwhile Extra Departmental Agents) who later became Employees but had not completed qualifying 10 years of departmental service for becoming eligible for pension. The Board, after careful consideration of the subject matter in issue by taking into account of the specific provision for non-admissibility of pension in the rules governing Gramin Dak Sevak, decided that there is no ambit for allowing counting of a part of Gramin Dak Sevak service in respect of regular employment to enable such employees to make up for the shortfall in the minimum required service for pension. In short, the stand of the 2nd Respondent is that the Postal Services Board decided that observance of Statutory Provisions prescribed in Rule 49 of the Central Civil Services (Pension) Rules, 1972 should be the norm and no deviation should be allowed in Statutory Provisions.

24. The Learned Counsel for the 2nd Respondent refers to the Notification dated 12.04.1991 of the Ministry of Communications, Department of Posts, Dak Bhavan, Sansad Marg, New Delhi addressed to All Chief Postmaster General/Postmasters General etc. on the subject 'Casual Labourers (Grant of Temporary Status and Regularisation) Scheme', wherein at paragraphs 1, 2, 6 to 8, it is observed as under:

"1. 'Temporary Status' would be conferred on the Casual labourers in employment as on 29.11.89 and who continue to be currently employed and have rendered continuous service at least one year; During the year they must have been engaged for a period of 240 days (206 days in the case of office observing five days weeks).

2. Such casual workers engaged for full working hours viz 8 hours including ½ hour's lunch time will be paid at daily rates on the basis of the minimum of the pay scale for a regular Group 'D' official including DA, HRA & CCA.

6.50% of the service rendered under Temporary status would be counted for the purpose of retirement benefits after regularisation as a regular Group 'D' officer.

7. Conferment of Temporary Status does not automatically imply that the casual labourers would be appointed as a regular Group 'D'

employee within any fixed time frame. Appointment to group D vacancies will continue to be done as per the extant recruitment rules, which stipulate preference to eligible ED employees.

8. After rendering three years' continuous service after conferment of temporary status, the casual labourers would be treated at par with temporary group D employees for the purpose of contribution to General Provident Fund. They would also further be eligible for the grant of Festival Advance/Flood Advance on the same conditions as are applicable to temporary group D employees, provided they furnish two sureties from permanent Govt. Servants of this Department."

25. The Learned Counsel for the 2nd Respondent cites the communication dated 05.06.1991 of Government of India, Ministry of Communications, Department of Posts addressed to all Chief Postmasters General, All Postmasters General, etc. on the subject 'Casual Labourers - temporary status' wherein at Serial Nos.4 and 5, it is observed as under:

"4. Casual labourers who work in offices observing 5 days week are not entitled to paid off on Saturday or Sunday. In other words, the weekly paid off after 6 continuous working days is permissible only to those casual workers who work at the rate of 8 hrs per day in establishments having 6 days week.

5. The scheme is also applicable to casual workers in the Civil Wing of this Department. It is not however, applicable to any person working on casual basis in Group C posts."

26. The Learned Counsel for the 2nd Respondent fairly points out the order dated 04.10.2007 in W.P.No.45465 of 2002 [between Union of India, The Secretary, Department of Posts, Dak Bhawan, New Delhi V. M.R.Palanisamy] wherein at paragraph 5, it is observed as under:

"5. After going through the entire materials placed on record we are of the view that once the rules making authority has considered it appropriate to treat fraction of a year equal to three months and above as a completed one half-year while calculating the length of qualifying service, considering the total length of service put in by the first

respondent, we are of the view that it is nothing serious if the first respondent's service, which is short of just three months is treated as a qualifying twenty half-year service, so as to extend the pro-rate pensionary benefits to him, which has been correctly assessed by the Tribunal in the order dated 18.4.2002 in O.A.No.1264 of 2001 filed by the first respondent. Therefore, we see no reason to interfere with the said considered order passed by the Tribunal. Accordingly, it is confirmed and the writ petition is dismissed. However, it is made clear that the relief granted in this writ petition is confined only to the case of the first respondent, which should not be treated as a precedent for others to follow. Consequently, the connected MP is also closed. No costs."

27. Besides the above, the Learned Counsel for the 2nd Respondent placed heavy reliance on the Division Bench Order of this Court dated 24.08.2018 in W.P.No.6855 of 2012 [between K.Subramaniam V. Union of India, rep. By Director General, Department of Posts, New Delhi] wherein at paragraphs 4 and 5, it is, inter alia, observed as follows:

"4.... However, in the present case, it is seen that the gap is not just of a few months or even of six months, but it is more than one year, in such cases, this decision would not apply to the case of the petitioner.

5. The Central Administrative Tribunal has taken into consideration all these facts and dismissed the OA preferred by the petitioner. Looking to the facts of this case, we do not find any merit in this petition."

28. The Learned Counsel for the 2nd Respondent seeks in aid of the order of the Hon'ble Supreme Court in Civil Appeal Nos.13675-13676 of 2015 (Special Leave Petition (Civil) Nos.17035-17036 of 2013) dated 24.11.2015 wherein at paragraphs 3, 7 to 9, it is observed as follows:

"3. The respondent no.2 viz. N.S.Poonusamy worked as an Extra Departmental Agent in the Postal Department from the year 1968 to 1993. He was regularized on 01.04.1993 and retired on 31.05.2002. The second respondent had completed nine years and two months of

service but he was not granted any pension. Therefore, he approached the learned Tribunal which directed that a Scheme be framed to give some benefit of service rendered by such employees as Extra Departmental Agents so as to enable them to earn the requisite period of qualifying service for pension i.e. 10 years. Aggrieved, the Union of India moved the High Court by way of a writ petition out of which these appeals have arisen.

7.The appellant-Union of India has filed an additional affidavit on 26.10.2015 stating inter alia that the Extra Departmental Agents covered by the DOP&T Circular, 1991, are full time casual employees, whereas the second respondent is a part time casual employee and under the Rules governing his service framed in the year 1964 and amended in the years 2001 and 2011, employees like the respondent no.2 are required to render between three to five hours of service every day. At the time of their appointment they are required to give an undertaking to the effect that they have alternative source of income to support their families. The need for appointment of such employees, according to the Union of India, is to reach out to the addresses in far flung villages in the country where establishment and maintenance of a regular post office is not a viable proposition. Attention is also drawn to the provisions of the aforesaid Rules to the effect that such employees are not entitled to pension but would be entitled to ex-gratia gratuity and such of the payments as may be decided by the Government from time to time.

8.Considering the fact that the DOP&T Circular, 1991, which form the basis of the impugned direction of the learned Tribunal as affirmed by the High Court, pertained to full time casual employees to which category the second respondent does not belong and the provisions of the Rules governing the conditions of service of the respondent as noted above, we are of the view that the impugned directions ought not to have been passed by the learned Tribunal and approved by the High Court. The matter pertains to

policy and involves financial implications. That apart, in view of the facts placed before us, as noted above, we deem it proper to interfere with the impugned directions and allow these appeals filed by the Union of India. We, however, make it clear that the pension granted to the second respondent will not be affected by this order and the said respondent will continue to enjoy the benefit of pension in accordance with the provisions of law.

9. Consequently, the appeals are allowed. We record the appreciation for the service rendered by Shri Nidhesh Gupta, learned amicus curiae."

29. By way of Reply, the Learned Counsel for the Petitioner refers to the order dated 09.06.2014 in O.A.No.48 of 2013 [between P.Velayutham V. Union of India, Postmaster General, Chennai] wherein at paragraph 3 it is observed as under:

"3. For sanction and payment of minimum pension by taking into consideration the shortfall period of service from the ED employment for the purpose of determination of qualifying service of ten years came up for consideration before the Cuttack Bench of the Tribunal in OA.No.614 of 2010 filed by another similarly situated employee of the Postal Department namely Jaladhar Sahu. The Cuttack Bench of the Tribunal vide order dated 8.7.2011 directed the Postal Department to grant the pension and pensionary benefits to the said Applicant, by taking into consideration the shortfall period of service from the ED employment for the purpose of determination of qualifying service of ten years. The Postal-Department challenged the said order before the Hon'ble High Court of Orissa in WP(C) No.29574 of 2011. The Hon'ble High Court of Orissa vide order dated 2.7.2012 dismissed the said Writ Petition. Thereafter, the Respondent-Department carried the matter to the Hon'ble Apex Court which was numbered as SLP (Civil) Community Certificate 5292/2013. The Hon'ble Apex Court dismissed the matter on 15.4.2013. As such, the Postal Department should have considered the case of the applicant by applying the said principle which has reached its finality instead of

rejecting the claim thereby compelling the individuals to approach the court of law which is nothing but wastage of time of the Courts and money of the state exchequer by way of fighting the defeating litigation."

and contends that the Tribunal had allowed O.A.No.48 of 2013 by quashing the order of rejection dated 07.02.2012 and that the Respondents therein was directed to sanction of minimum pension and other pensionary dues flowing therefrom by taking into consideration the shortfall period of service from the ED employment for the purpose of determination of qualifying service of ten years etc.

30.At this juncture, it is brought to the notice of this Court as against the order dated 09.06.2014 passed by the 1st Respondent in O.A.No.48 of 2013, the Department filed S.L.P.No.30726 of 2015 before the Hon'ble Supreme Court and the same is pending as on date, which is admitted by both sides.

31.Be that as it may, in the present case, net qualifying service of the Petitioner comes to 8 years 8 months and 24 days. It cannot be forgotten that the period of qualifying service of the Petitioner is less than 10 years. In fact, the yearning shortfall is more than one year and two months. Viewed in that perspective, keeping in mind of a primordial fact that the Petitioner had not completed 10 years of qualifying service in terms of Rule 49 of CCS (Pension) Rules, 1972 and also in the teeth of Hon'ble Supreme Court's Order in Civil Appeal Nos.13675-13676 of 2015 (Special Leave Petition (Civil) Nos.17035-17036 of 2013) dated 24.11.2015, this Court unhesitatingly comes to a consequent conclusion that the Petitioner is ineligible to stake a claim for Pension. Hence, the Writ Petition fails.

32.In fine, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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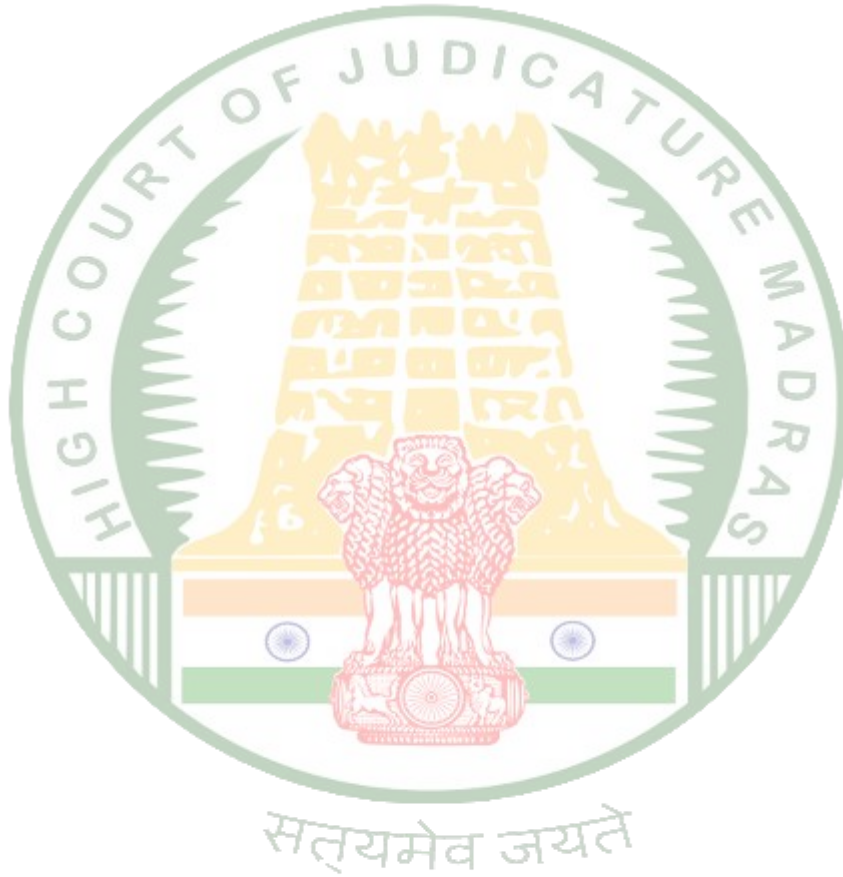
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+1 cc to Mr.V.Balasubramanian, Advocate, Sr.No. 38434

ORDER in
W.P.No.15410 of 2015

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