

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 08.03.2019
CORAM
THE HON'BLE MR. JUSTICE M.VENUGOPAL
AND
THE HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY
W.P.No.5305 of 2018

S.Raman Pillai

... Petitioner

vs.

1.Union of India rep.by
Senior Superintendent of Post Offices,
Kanniyakumari Division,
Nagercoil - 629 001.

2.The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai - 600 001.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records and quash the order dated 13.01.2017 passed by the Central Administrative Tribunal, Madras Bench in O.A.No.1913 of 2014 and consequently, direct the first respondent not to recover any amount from petitioner towards subscription to New Pension Scheme besides declaring that petitioner's pension is governed by CCS (Pension) Rules 1972.

For Petitioner : Mr.S.Arun

For R1 : Mr.V.Balasubramanian, SCGSC for
Mr.A.Veeramani

ORDER

(Order of the Court was made by M.VENUGOPAL,J.)

Heard both sides.

2.According to the Petitioner, he was appointed as a 'Gramin Dak Sevak' on 20.08.1988. Thereafter, he was promoted to the post of 'Postman' with effect from 25.08.2010. The Petitioner further states that Pension to the Employees of various Departments in Government of India was earlier governed by a single set of Rules, which were notified as CCS (Pension) Rules, 1972. As per the said Rules, the Government of India

assured each and every Employee of his right to receive a defined Pension, which would be paid out of the Consolidated Fund of India. As a matter of fact, the Government of India vide its Gazette Notification in F.No.5/7/2003-ECB&PR dated 22.12.2003 introduced a new set of Pension Rules, called as "New Pension Scheme".

3.The stand of the Petitioner is that as per the 'New Pension Scheme', Pension was determined to an Employee by way of his contribution at the time of his service in place of the then existing defined Pension under Old Pension Scheme under CCS (Pension) Rules, 1972. The 'New Pension Scheme' as notified on 22.12.2003, came into effect with effect from 01.01.2004 in respect of the Employees recruited by the Central Government on or after that date. When the Petitioner was granted promotion to the post of 'Postman', he thought that his service would be covered under the Old Defined Pension Scheme as notified under CCC (Pension) Rules, 1972. However, to his shock and dismay, the Department caused 10% recovery of his emoluments from his Basic pay + Dearness Allowance every month towards his contribution for 'New Pension Scheme' as if he was recruited as a 'new Entrant' in the Department for the first time on 25.08.2010.

4.It comes to be known that the Petitioner filed OA.No.1913 of 2014 before the Second Respondent/Central Administrative Tribunal, seeking to set aside the Order No.NPS/Dlgs dated 12.06.2014 passed by the Respondent (First Respondent in the present Writ Petition) and consequently, praying for passing of an order by this Court in issuing a direction not to recover any amount from him towards subscription to 'New Pension Scheme', besides declaring his pension as governed by CCS (Pension) Rules, 1972. In fact, the Tribunal came to the conclusion that the Petitioner should only be classified as 'new Entrant' and not an old Entrant to Government Service, in order to claim pension under 'Old Pension Scheme'. Apart from that, the Second Respondent/Tribunal opined that since the post of 'Gramin Dak Sevak', which the Petitioner holds before 01.01.2004 was outside the Central Civil Services, he could not be termed as an old Entrant to Central Government services and as such, the 'New Pension Scheme' alone is applicable to him.

5.The prime contention of the Petitioner is that there is no linkage between the post of 'Gramin Dak Sevak' and the post of 'Postman' to contend that the appointment as 'Postman' is only a fresh appointment and not a promotion from the post of 'Gramin Dak Sevak'. Furthermore, it is projected by the Petitioner that the Official Gazette Notification does not prescribe that the

'New Pension Scheme' is applicable to all the new Entrant to Central Civil Services.

6.Added further, the Learned Counsel for the Petitioner submits that the Notification enjoins that the 'New Pension Scheme' is applicable to all the new Entrant to Central Government Services i.e., for persons, who do not hold any post whatsoever in the Central Government either in organized Civil Services or otherwise before 01.01.2004. In this connection, the Learned Counsel brings it to the notice of this Court that the Petitioner before being appointed as Postman on 25.08.2010, was holding a Civil Post in the Central Government, viz., 'Gramin Dak Sevak' since 20.08.1988 and that the action of the Second Respondent/Tribunal in equating both the Petitioner and the persons, who are total strangers to Central Government Services before 01.01.2004, is an unjust and arbitrary one.

7.The Learned Counsel for the Petitioner comes out with a plea that the Second Respondent/Tribunal had observed that his earlier appointment in the Department of Post as a 'Gramin Dak Sevak' is a non-Governmental Post. In short, the Tribunal had not taken into account the fact that the post of 'Gramin Dak Sevak' in the Department of Post is declared as a 'Civil Post' by the Hon'ble Supreme Court in the decision rendered in Superintendent of Post Offices and others v. P.K.Rajamma and others reported in 1977 AIR SC 1677.

8.The Learned Counsel for the Petitioner refers to Rule 2(h) (i) of the CCS (CCA) Rules, 1965, which superseded 1957 Rules, in and by which, the term "Government Servant" is specifically defined, to include persons, who are holding a Civil Post under the Union of India and the same runs as under:

"2.Interpretation

(h) "Government Servant" means a person who...

(i) is a member of a Service or holds a Civil Post under the Union, and includes any such person on foreign service or whose service are temporarily placed at the disposal of a State Government, or a local or other authority."

9.The crystalline stand of the Petitioner is that the Second Respondent/Tribunal, without examining the factual aspects, came to the conclusion that he was not an old Entrant to the Central Government Service based on his earlier 'Gramin Dak Sevak Service' and further, termed his appointment as 'Gramin Dak Sevak' to a Non-Government Post.

10.The Learned Counsel for the Petitioner while expanding his submissions, points out that the Second Respondent/Tribunal had failed to take into consideration the instructions under Office Memorandum No.10-6/86-PCC/SPB-I (Pt-II) dated 22.06.1988 issued by the Assistant Director General, Department of Posts, wherein, in a categorical words, clarified to the Authorities lower to him that the Postman Examination to fill up vacancies from among 'Gramin Dak Sevak' is only a qualifying one and not competitive and the candidates will be arranged according to seniority. As such, it is the contention of the Learned Counsel that the process of appointment of 'Gramin Dak Sevak' as 'Postman' is only by way of 'Promotional Process' and he cannot be classified as a new Entrant to Central Government Service on or after 01.01.2004 in order to deny pension under 'Old Pension Scheme'.

11.The Learned Counsel for the Petitioner draws the attention of this Court to the order dated 16.11.2016 passed in O.A.No.749 of 2015 and batch of cases by the Central Administrative Tribunal, Principal Bench, New Delhi, wherein, a prayer was made to treat the Applicants therein on par with the other Central Government Civil Servants, besides seeking to consider their GDS service for the purpose of pension, in the event of they being promoted as 'Multi Task Staff/Postman' in the Department of Posts. Indeed, the aforesaid Tribunal had disposed of O.A.No.749 of 2015 etc. batch of cases by issuing the following directions:

"20.To summarise, we dispose of the OAs with the following directions to the respondents:

(a)For all Gramin Dak Sevaks, who have been absorbed as regular Group 'D' staff, the period spent as Gramin Dak Sevak will be counted in toto for the purpose of pensionary benefits.

(b)Pension will be granted under the provisions of CCS (Pension) Rules, 1972 to all Gramin Dak Sevaks, who retire as Gramin Dak Sevak without absorption as regular Group 'D' staff, but the period to be counted for the purpose of pension will be 5/8th for the period spent as Gramin Dak Sevak. Rule 6 will accordingly be amended.

(c)The Gramin Dak Sevak (Conduct and Engagement) Rules, 2011 are held to be valid except Rule 6, as stated above.

(d)The claim of Gramin Dak Sevaks for parity with regular employees regarding pay and allowances and other benefits available to regular employees, stands rejected."

12.The Learned Counsel for the Petitioner projects an argument that the Second Respondent/Tribunal, without considering the order dated 16.11.2016 passed in O.A.No.749 of 2015 etc. batch of cases, had merely disposed of the said Original Applications by directing the Petitioner to submit a representation to the First Respondent to implement the directions issued by the Second Respondent/Tribunal.

13.The pith and substance of the contention of the Petitioner is that the action of the Second Respondent/Tribunal in equating the Petitioner, who holds a Central Government Service Post viz., 'Gramin Dak Sevak' prior to 01.01.2004 and the persons who are total strangers to Central Government Services before 01.01.2004 for the purpose of applicability of 'New Pension Scheme' is an illegal one. The Learned Counsel further contends that the Second Respondent/Tribunal had overlooked a prime fact that the 'New Pension Scheme' is inapplicable to all the members of the Central Government Service, who were in roll prior to 01.01.2004 and not merely members of Central Civil Services. Therefore, the Petitioner has approached this Court with the Writ Petition seeking to call for the records and quash the order dated 13.01.2017 passed by the Second Respondent/Tribunal in O.A.No.1913 of 2014 and consequently, direct the First Respondent not to recover any amount from the Petitioner towards subscription to New Pension Scheme, besides declaring that the Petitioner's Pension is governed by CCS (Pension) Rules, 1972.

14.The Learned Counsel for the Petitioner in support of his contention that 'GDS Employees' are the 'Government Employees', relies on the decision of the Hon'ble Supreme Court rendered in Satya Dev Bushahri v. Padam Dev and others reported in AIR 1954 SC 587, wherein, at paragraph 15, it is observed as follows:

"15.It is argued for the appellant that leaving aside the world of theories and entering into the realm of practical politics, the appointment of a government servant as polling agent by one of the candidates must result in the dice being loaded heavily against the other candidate, and that situations might be conceived in which the presence of a government servant of rank and importance as polling agent of one of the candidates might prove to be a source of unfair election practices. But if that is established, and if it is made out that the candidate or his agent had abused the right to appoint a government servant as polling agent by exploiting the situation for furthering his election prospects, then

the matter can be dealt with as an infringement of Section 123(8). But the question, which we have got to decide is whether as an abstract proposition of law the mere appointment of a Government servant as a polling agent is in itself and without more, an infringement of Section 123(8). Our answer is in the negative. In the present case, the finding is that beyond acting as polling agent Sital Singh did nothing. Nor is there any finding that the respondent in any manner availed himself of his presence at the polling booth to further his own election prospects. Thus, there are no grounds for holding that Section 123(8) had been contravened."

15. The Learned Counsel for the Petitioner cites the decision of the Hon'ble Supreme Court in the Superintendent of Post Offices and others v. P.K. Rajamma reported in (1977) 3 SCC 94 at spl. pages 98 and 99, wherein, at paragraphs 4 and 5, it is held as under:

"4. It is thus clear that an extra departmental agent is not a casual worker but he holds a post under the administrative control of the State. It is apparent from the rules that the employment of an extra departmental agent is in a post which exists "apart from" the person who happens to fill it at any particular time. Though such a post is outside the regular civil services, there is no doubt it is a post under the State. The tests of a civil post laid down by this Court in State of Assam v. Kanak Chandra Dutta [AIR 1967 SC 884] case (supra) are clearly satisfied in the case of the extra departmental agents."

"5. For the appellants it is contended that the relationship between the postal authorities and the extra departmental agents is not of master and servant, but really of principal and agent. The difference between the relations of master and servant and principal and agent was pointed out by this Court in Lakshminarayan Ram Gopal and Son Ltd. v. Government of Hyderabad [AIR 1954 SC 364]. On page 401 of the report the following lines from Halsbury's Laws of England (Hailsham Edn.) Volume 1, at page 193, Article 345, were quoted with approval in explaining the difference:

"An agent is to be distinguished on the one hand from a servant, and on the other from an independent contractor. A servant acts under the direct control and supervision of his master, and is bound to conform to all

reasonable orders given to him in the course of his work; and independent contractor, on the other hand, is entirely independent of any control or interference and merely undertakes to produce a specified result, employing his own means to produce that result. An agent, though bound to exercise his authority in accordance with all lawful instructions which may be given to him from time to time by his principal, is not subject in its exercise to the direct control or supervision of the principal. An agent, as such is not a servant, but a servant is generally for some purposes his master's implied agent, the extent of the agency depending upon the duties or position of the servant."

The rules make it clear that these extra departmental agents work under the direct control and supervision of the authorities who obviously have the right to control the manner in which they must carry out their duties. There can be no doubt therefore that the relationship between the postal authorities and the extra departmental agents is one of master and servant. Reliance was placed on behalf of the appellants on two decisions, one of the Orissa High Court Venkata Swamy v. Superintendent. Post Offices [AIR 1957 Ori 112] and the other of the Madras High Court v. Subbarayalu v. Superintendent of Post Offices [AIR 1961 Mad 166]. The judgment in these cases were rendered before the elaborate rules governing the conduct and service of these extra departmental agents were brought into operation in 1964. We do not therefore think an examination of these two decisions will be relevant or useful for disposing of the appeals before us."

16. The Learned Counsel for the Petitioner seeks in aid of the decision of the Hon'ble Supreme Court in Chet Ram v. Jit Singh reported in (2008) 14 SCC 427 at spl. page 429, wherein, at paragraphs 2 and 4, it is observed as under:

"2. Whether a Gramin Dak Sewak is a government servant and consequently is disqualified to become a member of Nagar Panchayat in terms of Section 11(g) of the Punjab State Election Commission Act, 1994 (for short "the Act") is the question involved herein."

"4. The contention of the appellant that he was not a government employee having been working on part-time basis and, thus, was not disqualified in terms of Section 11(g) of the Act was rejected by the Tribunal by reason of its judgment and order dated 25-8-2004 inter alia holding that having regard to the provisions of Rule 22(4) of the Department of Posts, Gramin Dak Sewak (Conduct and Employment) Rules, 2001 (for short "the Rules"), he stood disqualified. An appeal was preferred thereagainst which was marked as FAO No. 4305 of 2004. By reason of the impugned judgment, the High Court held:

"The appellant is a part-time employee of the post office under the Central Government, outside regular civil service. Nonetheless, he is holding this post under the Government and he is also entitled to protection under Article 311 of the Constitution, in view of the judgment of the Apex Court in Rajamma case [Supdt. of Post Offices v. P.K. Rajamma, (1977) 3 SCC 94] and other judgments. He is also getting remuneration by way of salary. He is appointed by and paid by Central Government and is under direct control of the Central Government. Case of Madhukar G.E. Pankakar [Madhukar G.E. Pankakar v. Jaswant Chobbildas Rajani, (1977) 1 SCC 70] relating to insurance medical practitioner appointed under the provisions of the ESI Act is different. In the said case, the employee was not being paid directly by the Government nor was control of the Government direct, as observed in para 40 of the judgment. In the present case, the position is different. The appellant was, thus, rightly held to be disqualified from contesting election."

The appellant is, thus, before us."

Also, in the aforesaid decision, at page 434, at paragraph 18, it is mentioned as follows:

"18. In Union of India v. Kameshwar Prasad [(1997) 11 SCC 650 : 1998 SCC (L&S) 447] it was held: (SCC p. 652, paras 2-3)

"2. The Extra Departmental Agents system in the Department of Posts and

Telegraphs is in vogue since 1854. The object underlying it is to cater to postal needs of the rural communities dispersed in remote areas. The system avails of the services of schoolmasters, shopkeepers, landlords and such other persons in a village who have the faculty of reasonable standard of literacy and adequate means of livelihood and who, therefore, in their leisure can assist the Department by way of gainful avocation and social service in ministering to the rural communities in their postal needs, through maintenance of simple accounts and adherence to minimum procedural formalities, as prescribed by the Department for the purpose. (See Swamy's Compilation of Service Rules for Extra Departmental Staff in Postal Department, p. 1.)

3. The Extra Departmental Agents are government servants holding a civil post and are entitled to the protection of Article 311(2) of the Constitution (see Supdt. of Post Offices v. P.K. Rajamma [Supdt. of Post Offices v. P.K. Rajamma, (1977) 3 SCC 94]). They are governed by separate set of rules viz. the Posts and Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1964 (hereinafter referred to as 'the Rules'). The Central Civil Services (Classification, Control and Appeal) Rules are not applicable to this category of employees in view of the Notification dated 28-2-1957 issued by the Government of India under Rule 3 (3) of the said Rules."

17. The Learned Counsel for the Petitioner further refers to the order dated 10.07.2014 passed in Civil Writ Petition No.13491 of 2009 in the case of Union of India and others v. All India Postal ED Employees Union (Punjab Circle), Amritsar and others reported in CDJ 2014 PHC 737, wherein, it is held as under:

"The fundamental plea of the learned counsel for

the petitioners, initially, was that the nature of employment of the private respondents before us was different as they were not regular Government employees and they were not even paid bonus. However, he could not dispute the position that in view of the pronouncement in Chet Ram v. Jit Singh [(2008) 14 SCC 427] case (supra), these GDS had already been held to be Government employees."

18. Per contra, it is the submission of the Learned Counsel for the First Respondent that the Petitioner was initially engaged as 'Gramin Dak Sevak' at Velimalai Branch Office Account with Manalikai Sub Office on 20.08.1988. In the interregnum period, the Department initiated action to conduct the 'Postman Examination' for the 50% of vacancies (assessed for the year 2009) meant for Departmental Group 'D' Officials (now called Multi Task Staff) and 25% of merit quota vacancies. Further, it is represented that as against the total vacancies for 2009, 50% would be for 'Departmental Quota' and 50% for 'Direct Quota'. Moreover, from 50% of vacancies meant for Direct Quota, one half would be given for GDS, on the basis of length of service as prescribed in DG's Letter No.44-20/94-SPB-I dated 30.01.1995 communicated in Circle Office Letter No.REP/5-2/09/PM Exam/2010 dated 10.02.2010.

19. The Learned Counsel for the First Respondent points out that the GDS, who have completed a minimum satisfactory service of 5 years as on 01.01.2010, was permitted to take up the Examination meant for 25% of GDS merit quota subject to fulfillment of age and educational qualifications as prescribed in Postmaster General Southern Region (TN), Madurai, Memo No.REP/6-7/2010/MA dated 19.02.2010 and communicated in Senior Superintendent of Post Offices, Kanniyakumari Division, Nagercoil Memo No.B11/5-7/2010/PM Exam dated 03.03.2010. In this connection, the Learned Counsel for the First Respondent draws the attention of this Court to the fact that the Petitioner was one among the candidates applied for Postman Examination against 25% of vacancies for the year 2009 meant for GDS merit quota, since he has fulfilled all other criteria for appearing in the Examination scheduled to be held on 09.05.2010 and was postponed to 30.05.2010 and was really conducted on 30.05.2010 as per the order of the Postmaster General, SR, Madurai vide Letter No.REP/6-7/2010/MA dated 13.04.2010. In fact, the Petitioner was permitted to appear for the said Examination and hall permit bearing Roll No.J/04/PM/10 was issued to him. He attended the Examination on 30.05.2010 and the results were declared and communicated to the successful candidates, as per the letter of the Senior Superintendent of Post Offices, Kanniyakumari

Division, Nagercoil bearing No.Bl15-7/2010 dated 11.08.2010.

20.On behalf of the First Respondent, it is brought to the notice of this Court that the Petitioner had come out successful in the said Examination for the post of Postman conducted for outside candidates and he joined as 'Postman Marthandam Post Office' with effect from 26.08.2010. He was enrolled under 'New Pension Scheme' being Permanent Retirement Account No.110081266917, which was allotted to him. Besides this, the recovery towards 'New Pension Scheme' was commenced from the salary of the month following the month in which the Petitioner joined service, as per the Government of India, Ministry of Finance, New Delhi F.No.1(7)(2)/2003/TA/19 dated 14.01.2004 and the recovery is still continuously made from his salary. After the recovery of amount under the 'New Pension Scheme' from his salary from the month of his appointment as Postman, Marthandam, i.e., from September 2010, the Petitioner has filed the present Writ Petition in WP.No.5305 of 2018 with a plea, not to recover any amount towards 'New Pension Scheme' from his salary and to collect contribution towards General Provident Fund on the ground that he originally joined in the Department as early as on 20.08.1988 as 'Dak Sevak Mail Deliverer'.

21.The Learned Counsel for the First Respondent submits that the Petitioner's request dated 21.04.2014 to stop recovery of amount under the 'New Pension Scheme' and to recover the amount under the 'Old Pension Scheme', was rejected by the then Senior Superintendent of Post Offices, Kanniyakumari Division, Nagercoil, vide Letter No.NPS/Dlgs dated 12.06.2014 on the following grounds that the Government of India, Ministry of Finance, Department of Expenditure, Controller General of Accounts, New Delhi, vide F.No.1(7)(2)/2003/TA/19 dated 14.01.2004, has introduced a 'new Defined Contribution Pension Scheme' replacing the existing system of 'Defined Benefit Pension System', as per the Notification dated 22.12.2003, issued by the Government of India, Ministry of Finance, Department of Economic Affairs.

22.The Learned Counsel for the First Respondent forcibly projects an argument that the 'New Pension Scheme' comes into operation with effect from 01.01.2004 and is applicable to all the new Entrants to Central Government Service except to Armed Forces, joining Government Service on or after 01.01.2004. As such, the extant instructions on the 'Defined Benefit Pension' and GPF would not be applicable to new Government servants joining the Government service on or after 01.01.2004. In short, the Petitioner joined in the Departmental Government Service after 01.01.2004 and hence, he is ineligible for GPF contribution because of the reason that the GPF Scheme is inapplicable to him.

23.The Learned Counsel for the First Respondent also points out that the system of engaging EDAs (now called GDS) is exclusive to the Department of Posts and the Sevaks so engaged are not required to perform duty beyond a maximum period of 5 hours in a day. Further, they are the holders of Civil Post, but are not in Civil Regular Service, as they are not governed by Regular Civil Service Rules. Thus, EDAs/GDS is a distinct category and is governed by the non-statutory Rules formulated by the Government from time to time; and that GDS absorbed in regular Departmental posts on or after 01.01.2004 also ceased to be governed by CCS (Pension) Rules, 1972.

24.The core plea of the First Respondent is that the New Gramin Dak Sevaks (Conduct and Employment) Rules, 2001 and the revised Rules called (Conduct and Engagement) Rules, 2011 which came into effect from 24.04.2011, expressly mentioned under Rule 6 that "the Sevaks shall not be entitled to any pension".

25.The Learned Counsel for the First Respondent contends that the Petitioner's service rendered in 'GDS Cadre' cannot be equated with Casual Labourer in view of the fact that GDS shall be required to perform duty beyond the maximum period of 5 hours per day and his services are governed by Department of Posts, GDS (Conduct and Employment) Rules, 2001 superseded by revised Rules called the Department of Posts GDS (Conduct and Engagement) Rules, 2011. Further, the Petitioner is not paid with any salary or wages, but he is entitled for time related continuity allowance on the basis of work load as per the 'Standards of Assessment' decided by the Department, which clearly distinguishes a 'GDS' from the casual labourer. Besides this, when the status of the Government employee is not conferred to any of the GDS, the claim of the Petitioner seeking regularisation of his GDS services for the purpose of enrolling him under the 'old Pension Scheme' and 'GPF', is not a valid claim, according to the First Respondent.

26.The Learned Counsel for the First Respondent submits that GDS (Gramin Dak Sevaks) come under Rule 10 of GDS (C&E) Rules, 2001, for disciplinary proceedings and regular staff come under Rules 14 and 16 for disciplinary proceedings under CCS (CCA) Rules and that, the non-pensionable service rendered by GDS is well known to them, while working as GDS and when they are selected as MTS or Postman post, they are recruited only under 'Direct Recruitment Quota'. In short, the stand of the First Respondent is that when 'GDS service' itself is not pensionable, the demand of the Petitioner for 'Old Pension Scheme' is untenable.

27. The Learned Counsel for the First Respondent refers to Rule 14(2) of CCS (Pension) Rules, 1972, which provides that "for the purposes of Sub Rule (1), the expression 'Service' means survive under the Government and paid by that Government from Consolidated Fund of India or a Local Fund administered by that Government, but does not include service in a non-pensionable establishment unless such service is treated as qualifying service by that Government. Therefore, it is the contention of the First Respondent that "Extra Departmental Agents" are provided to be specifically excluded from the application of pension under applicable Rules and the Government has also not provided counting of a part of the service rendered by them in the capacity of EDA/GDS on absorption to regular departmental posts. Thus, it is the claim of the First Respondent that the regular appointment gained by them as MTS/Postman cannot be treated as "Continuous Service" from the earlier service. Moreover, Rule 4 of P&T Extra Departmental Agents (Conduct and Service) Rules 1964, expressly provided that the "Employee shall not be entitled to any pension". Even the Rules relating to Gramin Dak Sevak (Conduct and Employment) Rules, 2001 which came into effect from 24.04.2001 and also Rule 6 thereof expressly provided that "the Sevaks shall not be entitled to any pension". Under such circumstances, they cannot be treated as having entered into the service before 01.01.2004.

28. The Learned Counsel for the First Respondent also refers to Rules 3-A and 6 of the Department of Posts Gramin Dak Sevak (Conduct and Engagement) Rules, 2011, which are usefully extracted hereunder:

"3-A. Terms and Conditions of Engagement:

(i) A Sevak shall not be required to perform duty beyond a maximum period of 5 hours in a day;

(ii) A Sevak shall not be retained beyond 65 years of age;

(iii) A Sevak shall have to give an undertaking that he has other sources of income besides the allowances paid or to be paid by the Government for adequate means of livelihood for himself and his family;

(iv) A Sevak can be transferred from one post/unit to another post/unit in public interest;

(v) A Sevak shall be outside the Civil Service of the Union;

(vi) A Sevak shall not claim to be at par with the Central Government employees;

(vii) Residence in post village/delivery jurisdiction of the Post Office within one month after selection but before engagement shall be

mandatory for a Sevak;

Failure to reside in place of duty for GDS BPM and within delivery jurisdiction of the Post Office for other categories of Gramin Dak Sevaks after engagement shall be treated as violative of conditions of engagement and liable for disciplinary action under Rule 10 of the Conduct Rules, requiring removal/dismissal;

(viii) Post Office shall be located in the accommodation to be provided by Gramin Dak Sevak Branch Postmaster suitable for use as Post Office premises;

(ix) Combination of duties of a Sevak shall be permissible."

"6. Pension:

The Sevaks shall not be entitled to any pension. However, they shall be entitled to ex gratia gratuity or any other payment as may be decided by the Government from time to time."

29. The Learned Counsel for the First Respondent relies on the non-Reportable judgment of the Hon'ble Supreme Court in Civil Appeal No.90 of 2015 dated 12.08.2016 between Y.Najithamol and others and Soumya S.D and others, wherein, at paragraph 12, it is observed and held as under:

"The Division Bench of the High Court placed reliance on the wording of Column 11(1) to conclude that since the Extra Departmental Agents being appointed as provided under Column 11(1) can be called as promotees, then the Extra Departmental Agents under Column 11(2)(i) and (ii) also must be treated at par. The said reasoning of the High Court also cannot be sustained. It is nobody's case that the Extra Departmental Agents being appointed under Column 11(1) be called promotees. The language of Column 11(1) itself makes this crystal clear. The use of the words 'failing which' makes it obvious that there is a distinction between those candidates who are being selected by way of promotion, and the candidates who are Extra Departmental Agents and have cleared the departmental examination, and that the latter will be considered for appointment only if there are no eligible candidates under the former category. Thus, the appointment of GDS to the post of Postman can only be said to be by way of direct recruitment and not promotion.

Also, in the aforesaid decision, at paragraph 9, it is observed as under:

At this stage, it is also useful to refer to the decision of this Court in the case of C.C. Padmanabhan & Ors. v. Director of Public Instructions & Ors.[1980 (Supp) SCC 668], wherein it was held as under:

"This definition fully conforms to the meaning of 'promotion' as understood in ordinary parlance and also as a term frequently used in cases involving service laws. According to it a person already holding a post would have a promotion if he is appointed to another post which satisfies either of the following two conditions, namely-

(i) that the new post is in a higher category of the same service or class of service;

(ii) the new post carries a higher grade in the same service or class."

Promotion to a post, thus, can only happen when the promotional post and the post being promoted from are a part of the same class of service. Gramin Dak Sevak is a civil post, but is not a part of the regular service of the postal department. In the case of Union of India v. Kameshwar Prasad [(1997) 11 SCC 650], this Court held as under:

"2. The Extra Departmental Agents system in the Department of Posts and Telegraphs is in vogue since 1854. The object underlying it is to cater to postal needs of the rural communities dispersed in remote areas. The system avails of the services of schoolmasters, shopkeepers, landlords and such other persons in a village who have the faculty of reasonable standard of literacy and adequate means of livelihood and who, therefore, in their leisure can assist the Department by way of gainful avocation and social service in

ministering to the rural communities in their postal needs, through maintenance of simple accounts and adherence to minimum procedural formalities, as prescribed by the Department for the purpose. [See: Swamy's Compilation of Service Rules for Extra Departmental Staff in Postal Department p. 1.]”

Further, a three-judge Bench of this Court in the case of *The Superintendent of Post Offices & Ors. v. P.K. Rajamma* [(1977) 3 SCC 94] held as under:

“It is thus clear that an extra departmental agent is not a casual worker but he holds a post under the administrative control of the State. It is apparent from the rules that the employment of an extra departmental agent is in a post which exists "apart from" the person who happens to fill it at any particular time. Though such a post is outside the regular civil services, there is no doubt it is a post under the State. The tests of a civil post laid down by Court in *Kanak Chandra Dutta's case* (supra) are clearly satisfied in the case of the extra departmental agents.”
(emphasis laid by this Court)

A perusal of the above judgments of this Court make it clear that Extra Departmental Agents are not in the regular service of the postal department, though they hold a civil post. Thus, by no stretch of imagination can the post of GDS be envisaged to be a feeder post to Group 'C' posts for promotion."

30. In the light of the qualitative and quantitative discussions and also taking note of the fact that the Petitioner was appointed as Postman in Marthandam Post Office on 25.08.2010 and that, he got himself enrolled under the 'New Pension Scheme' and was allotted with Permanent Retirement Account No.110081266917 and also that, the recovery towards 'New Pension Scheme' from his salary, was effected from the month in which he joined as 'Postman' and the same is still continued to be made by the Department, this Court is of the considered view that the

Petitioner's earlier service as 'GDS' cannot be treated for any pensionary benefit. Furthermore, the Petitioner can only be treated as a person having joined in the service on 26.08.2010 and by no stretch of imagination, he cannot be characterized as the person having entered into service before 01.01.2004. Apart from that, the 'Gramin Dak Sevaks' do not come under the CCS (Pension) Rules, which are applicable only to 'Regular Departmental Staff'.

31.A crucial fact, which one has to bear in mind that the 'Gramin Dak Sevaks' are not required to perform the duty beyond the maximum period of 5 hours per day. Further, as per Rule 3-A of the Department of Posts Gramin Dak Sevak (Conduct and Engagement) Rules, 2011, a Sevak shall be outside the Civil Service of the Union. Hence, the Petitioner cannot be equated on par with the Central Government Employees. Looking at from any angle, this Writ Petition is devoid of any merits and the same deserves to be dismissed.

32.In fine, this Writ Petition stands dismissed, leaving the parties to bear their own costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1.Senior Superintendent of Post Offices,
Union of India,
Kanniyakumari Division,
Nagercoil - 629 001.

2.The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai - 600 001.

+1 cc to Mr.S.Arun, Advocate, Sr.No. 21955

+1 cc to Mr.A.Veeramani, Advocate, Sr.No. 22328

W.P.No.5305 of 2018

SSI (CO)
CSL/04.06.2019