

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :11.02.2019

PRONOUNCED ON : 27.02.2019

CORAM

THE HON'BLE Mr. JUSTICE M.VENUGOPAL
And
THE HON'BLE Mr. JUSTICE P.RAJAMANICKAM

W.P.No.2290 of 2018
and
W.M.P.No.2800 of 2018

1.Union of India,
rep. By the Director General,
Department of Posts,
Dak Bhawan, New Delhi - 110 001.

2.The Postmaster General,
Chennai City Region,
Chennai - 600 002.

3.The Senior Superintendent of Post Offices,
Pondicherry Division,
Pondicherry - 605 001.

.. Petitioners

Vs.

1.K.Ragothaman
Group-D (Retired)
Villupuram Head Post Offices,
residing @ 43/16, Masilamanipet,
Kamala Nagar, Villupuram - 605 602.

2.The Central Administrative Tribunal,
Rep. By its Registrar,
Madras Bench, Chennai - 600 104.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records on the file of the 2nd Respondent in connection with the order passed in O.A.No.458 of 2015 vide order dated 06.07.2016 and quash the same.

For Petitioners : Mr.C.V.Ramachandramurthy

For 1st Respondent : Mr.P.R.Satyanarayanan

For 2nd Respondent : Tribunal

ORDER

M.VENUGOPAL, J.

The Petitioners have filed the instant Writ Petition praying for passing of an order by this Court in calling for the records on the file of the Central Administrative Tribunal pertaining to the order passed in O.A.No.458 of 2015 dated 06.07.2016.

2.Earlier, the 2nd Respondent/Central Administrative Tribunal, Madras Bench, while passing orders in Original Application No.310/00458 of 2015 [filed by the 1st Respondent/Applicant], at paragraphs 9 and 10, had observed the following:

"9.Be that as it may, the fact that the applicant was appointed on adhoc

basis as Group D on 26.6.2000 against the 'vacancies for the year 2000' and continued as Group D employee on adhoc basis till 21.03.2002 cannot be disputed as it is a matter of record. It is admitted that in terms of Rule 49 of the CCS (Pension) Rules, the period of 10 years of qualifying service will entitle a government servant to pension on his retirement. It is also admitted that relevant executive instructions exist to the effect that in view of Rule 49(3) of CCS (Pension) Rules, a period of three months and above and less than six months is counted as one half year and reckoned as qualifying service for determination of pension. A period of 9 months would, therefore, be two half years. Accordingly, a service of over 9 years 9 months should be counted as 10 years for the purpose of determining the qualifying service.

10. In the backdrop of the aforesaid rule position, it appears that the validity of the respondents' contention that only a regular service would qualify for pension would need to

be tested. The term 'qualifying service' is defined in Rule 3(1)(q) of the CCS (Pension) Rules as follows:-

"Qualifying service' means service rendered while on duty or otherwise which shall be taken into account for the purpose of pensions and gratuities admissible under these rules."

A plain reading of the above definition indicates that qualifying service must include services rendered while on duty or otherwise. By no stretch of imagination can it be argued that adhoc service rendered on a regular post i.e. Group D is not a 'service rendered while on duty or otherwise'. Nor is there a requirement in this rule or Rule 49 ibid that the service rendered should be continuous and broken periods could not be added together to arrive at qualifying service. As such, there is no distinction between adhoc service and regular service for the purpose of counting the qualifying service for pension as long as it is a service under the Government. There is no merit either in the argument that only

***continuous service rendered from
2.7.2002 could be counted for pension."***

and directed the Respondents (Writ Petitioners) to count the Ad hoc service rendered by the 1st Respondent/Applicant from 26.06.2000 to 21.03.2002 as Qualifying Service and process his pension case accordingly etc.

3.Challenging the Correctness, Validity and Legality of the impugned order dated 06.07.2016 in O.A.No.458 of 2015 passed by the 2nd Respondent, the Petitioners have filed the present Writ Petition by taking a plea that the 2nd Respondent/Tribunal had failed to consider that the 1st Respondent/Applicant was appointed on Ad hoc basis with effect from 26.06.2000 with a clear mention that his appointment was purely on Ad hoc basis and does not confer any right for regular absorption as Group-D.

4.The Learned Counsel for the Petitioners contends that the 1st Respondent/Applicant was initially engaged as 'GDS' and the appointment to Group-D is 100% Direct Recruitment and appointment of GDS as Group 'D' is a Direct Recruitment and not only promotion. Further, it is projected on the side of the Petitioners

that generally if a post falls vacant, it will not be filled immediately and it is bound to take some time to fill up the post, as it involves procedures like assessment of vacancies, recasting of rosters and approval of the Competent Authority to fill up the same and complete other formalities as prescribed by Recruitment Rules like issue of Notification, convening of Departmental Promotion Committee.

5.The Learned Counsel for the Petitioners emphatically comes out with a plea that in the present case, the vacancy related to the year 2000, and the Senior Superintendent of Post Offices after obtaining 'Approval' from the 'Higher Authorities' had convened DSC in 2000 itself. However, only due to the Ban Order issued by the Ministry of Finance, the regular appointment was not offered and the Ban Order was issued by the Government of India is a policy decision applicable to all Central Government Departments and in reality, the Petitioners had only acted as per the order of the Government.

6.Advancing his argument, the Learned Counsel for the Petitioners points out that the observation of the 2nd Respondent/

Tribunal is not correct on the part of the Petitioners to have terminated 'Ad hoc Appointment' of the 1st Respondent/Applicant is wrong, since the appointment of Group 'D' is 100% 'Direct Recruitment' and also, it is covered by the Office Memorandum dated 16.05.2001 imposing 'Ban'.

7.The Learned Counsel for the Petitioners refers to a Letter dated 03.04.2012 in Reference No.C 655 of the 3rd Respondent/Senior Superintendent of Post Offices, Pondicherry Division, Pondicherry addressed to the 1st Respondent/Applicant wherein the request of the 1st Respondent/Applicant for grant of minimum pension taking into account the 'GDS' service was not considered, because of the reason that no orders were received from the Director General for implementing the orders of the Hon'ble High Court dated 04.10.2007 in respect of M.R.Palaniswamy, Retired Group D, Tiruppur, which is applicable to said M.R.Palanisamy alone.

WEB COPY

8.The Learned Counsel for the Petitioners points out that the Letter of the 2nd Petitioner/Postmaster General, Chennai addressed to the 1st Respondent/Applicant dated 11.08.2014 [with request to the grant of pension] wherein it was informed that the decision

taken by the Senior Superintendent of Post Offices, Pondicherry Division, Pondicherry as the Pension Sanctioning Authority was in order and as per the existing Pension Rule and as such, the decision was not interfered with.

9.The Learned Counsel for the Petitioners relies on the Rule 49(1) and (3) of the Central Civil Services (Pension) Rules, 1972, which runs as under:

"49.Amount of Pension

{1.Substituted vide G.I., Dept. of P & P.W., Notification No.2/18/87-P. & P.W. (PIC), dated the 20th July, 1988, published as S.O.No.2388 in the Gazette of India, dated the 6th August, 1988 and takes effect from 1st January, 1986.}

(1)In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of ten years, the amount of service gratuity shall be calculated at the rate of half month's emoluments for every completed six monthly period of qualifying service.

(3)In calculating the length of

qualifying service, fraction of a year equal to three months and above shall be treated as a completed one half-year and reckoned as qualifying service."

10. The Learned Counsel for the Petitioners points out that Rule 88 of the Central Civil Services (Pension) Rules, 1972 which reads as follows:

"88. Power to relax

Where any Ministry or Department of the Government is satisfied that the operation of any of these rules, causes undue hardship in any particular case, the Ministry or Department, as the case may be, may, by order for reasons to be recorded in writing, dispense with or relax the requirements of that rule to such extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner:

Provided that no such order shall be made except with the concurrence of the Department of Personnel and Administrative Reforms."

11.The Learned Counsel for the Petitioners fall back upon a Communication No.REP/2 2/2001 DR at Chennai 600 002 dated 24.6.2002 addressed to All Regional Postmasters-General, T.N. Circle, wherein it is inter alia observed as follows:

".... As per the orders of the Directorate, the terminated adhoc appointees of 1999 may be appointed strictly based on their merit and post based roster points against the vacancies now allotted to each division/unit in accordance with the instructions contained in DO party workers OM No2/8/2001-PIC dated 16.5.2001 communicated in Circle Office letter of even no. dated 11.7.2001.

Action for the appointment of terminated adhoc appointees including Physically handicapped to the extent of vacancies indicated in the annexure may please be completed expeditiously and orders issued on regular basis with a copy to Circle Office.

Terminated adhoc appointees who could not be accommodated in their own division for want of vacancies may be asked to express their willingness to work as PA(PO)/S.A. in the neighbouring division where vacancies are available as indicated in the annexure. The divisions where no adhoc appointees in PA(PO)/S.A. Cadre are available should fill up the vacancies now allotted to them from the surplus terminated adhoc appointees of the neighbouring divisions after getting approval from the Circle Office.

A strict compliance report may be sent to the undersigned within a week of receipt of this letter."

12. Conversely, it is the submission of the Learned Counsel for the 1st Respondent/Applicant that the 1st Respondent was appointed as Extra Departmental Packer, presently known as 'Gramin Dak Sevak (GDS)' at Villupuram Post Office on 16.10.1971 and he was due for promotion to the post of Group 'D' by means of his seniority in GDS cadre, as per the Recruitment Rules in force at that time.

13. In this connection, the Learned Counsel for the 1st Respondent/Applicant brings it to the notice of this Court that based on the Seniority of the 1st Respondent, the 3rd Petitioner issued a Memo No.B2/Gr. 'D'/Appt./Dlgs dated 23.05.2000, in and by which, he was promoted as Group 'D' on Adhoc basis in respect of vacancies for the year 2000 and he joined as Group 'D' on 26.06.2000. Later, while working as Leave Reserve Group 'D' at Nellithope Post Office on 'Ad hoc' Basis, he was issued with Letter No.B/Dlgs dated 31.12.2001 by the 3rd Petitioner intimating the intention to terminate his services at the end of the specified notice period without assigning any reason for the same and he was relieved from the post on 21.03.2002.

14. The Learned Counsel for the 1st Respondent submits that the 1st Respondent was appointed once again regularly as Group 'D' by means of Memo dated 27.06.2002 issued by the 3rd Petitioner for the very same 'vacancy year 2000' with the approval of the 1st Respondent and competent authority and continued to work as Group 'D' from 02.07.2002 till his retirement on 31.07.2010. As such, he had put up total service of 9 years and 9 months and 28 days as Group 'D' in a regular vacancy which is extracted in the following tabulated format:

Mode of appointment	From	To	Period		
			Yr.	Month	Days
Adhoc appointment as Group 'D'	26.06.2000	20.03.2002	1	8	28
As regular Group 'D' on Regular promotion	02.07.2002	31.07.2010	8	0	30
Total service as Group 'D'			9	9	28

15. The core contention of the 1st Respondent is that since he had put in 9 years, 9 months and 28 days as Group 'D' in a 'Regular Vacancy'. He is qualified for the grant of pension as per Rule 49 of CCS (Pension) Rules, 1972. The grievance of the Petitioners is that the 3rd Petitioner had not processed his pension papers for grant of eligible pension and hence, he made a representation to the 3rd

Petitioner on 13.10.2010, 31.01.2012 & 11.02.2012 claiming grant of eligible pension. However, his claim was rejected by the 3rd Petitioner as per Letter dated 03.04.2012 and hence, the 1st Respondent/Applicant preferred an Appeal before the 2nd Petitioner on 25.07.2014 explaining the circumstances and claiming grant of eligible Pension taking into account the Ad hoc service as Group 'D' for one year 8 months 28 days.

16.The Learned Counsel for the 1st Respondent takes a stand that the 1st Respondent filed O.A.No.458/2015 before the 2nd Respondent/Tribunal and the Tribunal on 06.07.2016 was pleased to allow the Original Application and directed the Petitioners/ Respondents to count the Ad hoc service rendered by the 1st Respondent from 26.06.2000 to 21.03.2002 as 'Qualifying Service' for the purpose of grant of Pension and necessary orders were directed to issue within a period of two months from the date of receipt of copy of this order.

17.The Learned Counsel for the 1st Respondent points out that the Petitioners filed M.A.Nos.142/2017 and 143/2017 before the Central Administrative Tribunal praying for extension of time to

implement the orders of the Tribunal dated 06.07.2016 passed in O.A.No.458 of 2015 and the Tribunal on 28.02.2017 was pleased to grant extension of time of one month's time to implement the order.

18.The Learned Counsel for the 1st Respondent submits that the 1st Respondent was appointed as Group 'D' on Ad hoc basis against vacancies relating to the year 2000 and pending regularisation, he continued as such till his services were terminated as a result of the DOPT order dated 16.05.2001 regarding 'Optimisation of Direct Recruitment to Civilian Posts'. However, the order dated 16.05.2001 issued by the DOPT was applicable only for vacancies arising in 2001-2002 and the subsequent years and it was not concerned with the year 2000.

19.The primordial plea taken by the 1st Respondent/Applicant in a crystalline fashion is that he was appointed on Ad hoc Basis pertaining to the vacancy of the year 2000 and that necessary approval was accorded by the 1st Petitioner by directing the 3rd Petitioner to reinstate him into service once again against the very same 'vacancy year 2000' and in fact, the appointment order was issued by the 3rd Petitioner dated 27.06.2002 and once again he

rejoined as Group 'D' on 02.07.2002 and his services therefore stood regularised.

20.Suffice it to point out that the 1st Respondent in his Counter to the present Writ Petition had averred that by taking into consideration both the spells of service i.e. from 26.06.2000 to 20.03.2002 and from 02.07.2002 to 31.07.2010 he had put in qualifying service of 9 years 9 months 28 days and therefore, he is eligible to claim pension as per Rule 49 of the CCS (Pension) Rules, 1972.

21.The Learned Counsel for the 1st Respondent refers to Rule 28 of CCS (Pension) Rules, 1972 which speaks of 'Condonation of Interruption in service' and as per the above Rules, the service of the 1st Respondent from 26.06.2000 to 20.03.2002 should be treated as 'Qualifying Service' and combined with the service from 02.07.2002 to 31.07.2010.

22.The Learned Counsel for the 1st Respondent strenuously contends that it is immaterial whether the appointment of the 1st Respondent as Group 'D' was a promotion or Direct Recruitment and

as per the Recruitment Rules in force at that time, the post Group 'D' were to be filled from among GDS Officials on the basis of Seniority cum Fitness and in this regard, the Department of Posts had issued guidelines in Letter No.47-11/93-SPB-I dated 25.08.1993 which enjoins as follows:

"Departmental Promotion Committee for promotion to Group 'D':

" As the maximum age prescribed for promotion of ED Agents to Group 'D' is 50 years, some of the ED Agents lost their chance to get promoted as Group 'D'. It is therefore requested that the DPCs for promotion of ED Agents to Group 'D' should be held as per the prescribed schedule, particularly keeping in view those cases where some of the ED Agents due for promotion are nearing the age of 50 years as prescribed in the Recruitment Rules."

WEB COPY

23.The Learned Counsel for the 1st Respondent/Applicant refers to the Letter bearing No.REP/2-2/2001-DR dated 25.06.2002 of the Chief Postmaster-General, Tamil Nadu Circle, Chennai 600

002 addressed to all Regional Postmasters-General, T.N. Circle, wherein it is mentioned as under:

".... As per the Directorate orders vide their letter no.66-18-2002-SPB.I dated 20.5.2002, the terminated adhoc appointees, if any, in the division/unit under the control of your region may be appointed on regular basis against the vacancies allotted to the division concerned. Approval for filling up these posts will be issued separately from this office. Till then these allotted vacancies may not be filled up except for Dharmapuri, Pattukottai, Kovilpatti, Chengalpattu and Pondicherry Dn."

24.The Learned Counsel for the 1st Respondent submits that the delay in regularisation of 'Ad hoc Arrangement' even after conducting DPC in the year 2000 itself and inspite of specific guidelines dated 25.08.1993 issued by the Postal Department is not attributable to the 1st Respondent and ultimately, the 1st Respondent cannot be made to suffer even after rendering 'prescribed qualifying service'.

25.Lastly, it is the stand of the 1st Respondent that the 2nd Respondent/Tribunal had passed a well reasoned order dated 06.07.2016 in O.A.No.458 of 2015 and the same is perfectly just and valid one.

26.The Learned Counsel for the 1st Respondent/Applicant refers to the ***Order dated 10.09.2018 in W.P.No.4681 of 2018 [between Union of India, represented by the Secretary, Department of Posts, New Delhi and 2 others V. R.Shanmugam and another]*** wherein at paragraphs 4 to 6, it is observed as under:

"4.The first respondent had placed reliance on Rule 3(1)(q) of the CCS Pension Rules, 1972, in which the qualifying service for the purpose of pension has been defined as follows:

"3(1)(q).- Qualifying service means service rendered while on duty or otherwise which shall be taken into account for the purpose of pensions and gratuities admissible under these rules."

5.According to the first respondent, earlier, he had rendered service of one year in an officiating capacity as Postman in the Department

and the said period has also to be taken into account while considering the period of qualifying service. According to the first respondent, while computing qualifying service for pension, if the earlier period had been taken into account, he would have the qualifying service of more than 10 years.

6. On going through the order of the Central Administrative Tribunal, we have noticed that the learned counsel for the respondents therein i.e., the present petitioners, had made a categorical statement that they have no objection to the qualifying service being so computed, which means that for computing the qualifying service for pension, the present petitioners were willing to include the period spent on officiating service. Once categorical statement to this effect had been made before the Central Administrative Tribunal by the learned counsel for the petitioners, now the petitioners cannot be allowed to challenge the order of the Central Administrative Tribunal, which directed that the period of service spent

by the first respondent on officiating duty prior to his induction into training be counted for determining his pension and other pensionary benefits. In this view of the matter, we are not inclined to interfere with the impugned order of the Central Administrative Tribunal."

27.The Learned Counsel for the 1st Respondent/Applicant relies on the ***Order dated 26.11.2013 in W.P.No.2635 of 2013 [Union of India, represented by Director General, Department of Posts, New Delhi and 4 others V. S.Abdul Azeez and another]***, wherein at paragraphs 6 to 8, it is observed as follows:

"6.The learned counsel for the first respondent on the other hand submitted that considering the ED Staff service of the first respondent from 30.10.1970 and his continuity upto 30.4.2008, the Tribunal was justified in giving direction to the writ petitioners treating that the first respondent has completed 10 years of qualifying service for the purpose of pension and other benefits.

7.The learned counsel for the first

respondent also relied on the judgment of the Division bench of this Court made in Writ Petition No.45465 of 2002 dated 4.10.2007 (Union of India rep. By the Secretary, Dept. of Posts, Dak Bhawan, New Delhi 110 001 v. M.R.Palanisamy, wherein a similar issue was raised by an E.D. Staff, who served for 29 years before his permanent absorption as Group "D" staff and he was ordered to be granted pension treating the person as completed 10 years of qualifying service though he was having a regular service of 9 years, 3 months and 29 days, with reference to the E.D.Staff service. The said judgment was challenged before the Hon'ble Supreme Court in SLP No.13829 of 2008 and the Hon'ble Supreme Court also dismissed the Special Leave Petition on 17.10.2008 and thereafter, the very same Department sanctioned pension to the said person, viz., M.R.Palanisamy by order dated 9.10.2009.

8.Even though the order of the Division Bench in Writ Petition No.45465 of 2002 dated 4.10.2007 restricted the

relief only to the first respondent in the said Writ Petition, another Division Bench of this Court in Writ Petition No.22833 of 2010 (T.Jayaraman v. The Post Master General, Central Region, T.N. Circle, Trichy and others) noticing the similar set of facts allowed the Writ Petition by order dated 10.11.2010 noticing the earlier order, which was confirmed by the Supreme Court and which was also implemented by the Department."

Further, in the aforesaid Order, at paragraphs 10 to 12, it is observed as under:

"10.A Division Bench of Karnataka High Court by order dated 25.3.2013 in Writ Petition No.72872 of 2012 (S-CAT) (Union of India, rep. By the Secretary, Department of Posts, Dak Bhavan, New Delhi 110 001 and others v. B.V.Dambal) also passed similar order. 11.Therefore, there is consistent view on this aspect and the matter having been attained finality, it is not proper for the petitioners/Postal Department to

repeatedly challenged the order before this Court.

12.Further, the facts in the above referred cases are exactly similar to the case of the first respondent as he served as E.D.Staff from 30.10.1970 and after 28 years of service, he was regularly absorbed as Group "D" staff from 25.11.1998. Apart from the said facts, as noticed by the Tribunal, the first respondent also served for 8 months and 15 days in officiating capacity prior to his absorption as a permanent employee, though there is 18 days gap."

28.The Learned Counsel for the 1st Respondent/Applicant cites the decision of the Hon'ble Supreme Court in ***State of W.B. and others V. Aghore Nath Dey and others, (1993) 3 Supreme Court Cases 371 wherein at paragraph 25,*** it is observed as follows:

"25.In our opinion the conclusion (B) was added to cover a different kind of situation, wherein the appointments are otherwise regular, except for the

deficiency of certain procedural requirements laid down by the rules. This is clear from the opening words of the conclusion (B), namely, 'if the initial appointment is not made by following the procedure laid down by the rules' and the later expression 'till the regularisation of his service in accordance with the rules'. We read conclusion (B), and it must be so read to reconcile with conclusion (A), to cover the cases where the initial appointment is made against an existing vacancy, not limited to a fixed period of time or purpose by the appointment order itself, and is made subject to the deficiency in the procedural requirements prescribed by the rules for adjudging suitability of the appointee for the post being cured at the time of regularisation, the appointee being eligible and qualified in every manner for a regular appointment on the date of initial appointment in such cases. Decision about the nature of the appointment, for determining whether it falls in this category, has to be made on the basis of the terms of the initial appointment itself and the provisions in the rules. In such

cases, the deficiency in the procedural requirements laid down by the rules has to be cured at the first available opportunity, without any default of the employee, and the appointee must continue in the post uninterruptedly till the regularisation of his service, in accordance with the rules. In such cases, the appointee is not to blame for the deficiency in the procedural requirements under the rules at the time of his initial appointment, and the appointment not-being limited to a fixed period of time is intended to be a regular appointment, subject to the remaining procedural requirements of the rules being fulfilled at the earliest. In such cases also, if there be any delay in curing the defects on account of any fault of the appointee, the appointee would not get the full benefit of the earlier period on account of his default, the benefit being confined only to the period for which he is not to blame. This category of cases is different from those covered by the corollary in conclusion (A) which relates to appointment only on ad hoc basis as a stop-gap arrangement and not according

to rules. It is, therefore, not correct to say, that the present cases can fall within the ambit of conclusion (B), even though they are squarely covered by the corollary in conclusion (A)."

29. The Learned Counsel for the 1st Respondent seeks in aid of the decision of the Hon'ble Supreme Court in ***Nirmal Chandra Bhattacharjee and others V. Union of India and Others, 1991 Supp(2) Supreme Court Cases 363, at special page 366 & 367***, wherein at paragraph 5, it is observed and held as follows:

"5. One of the principles of service is that any rule does not work to prejudice of an employee who was in service prior to that date. Admittedly the vacancies against which appellants were promoted had occurred prior to restructuring of these posts. It is further not disputed that various other posts to which class 'IV' employees could be promoted were filled prior to 1st August 1983. The selection process in respects of Ticket Collectors had also started prior to 1st August 1983. If the department would have proceeded with the selection well within time and would have completed it

before 1st August 1983 then the appellants would have become Ticket Collectors without any difficulty. The mistake or delay on the part of the department, therefore, should not be permitted to recoil on the appellants. Para '31' of the restructuring order itself provides that vacancies in various grades of posts covered in different categories existing on 31st July 1983 would be filled in accordance with the procedure which was in vogue before 1st August, 1983."

30. The Learned Counsel for the 1st Respondent relies on the decision of the Hon'ble Supreme Court in ***Ram Lal V. Union of India, (1996) 10 Supreme Court Cases 164, at special page 165***, wherein at paragraph Nos.2 and 3, it is observed as follows:

"2.He filed the OA contending that he must be deemed to have been regularly appointed from the initial date of his appointment and that, therefore, he is entitled to all the consequential benefits. In the impugned order, the Tribunal was right in observing that unless the petitioner had undergone the medical test and was properly selected

in order to be appointed on regular basis, he has no right to claim service benefits of a regular employee. The appointing authority has put him back to the regular status w.e.f. The date of his reinstatement in September 1971. It is sought to be contended that once he was appointed on regular basis, in view of the decision of the civil court it must be deemed that he should have been continued in service from the beginning. We find no force in the contention. In support thereof, he placed reliance on the judgment of this Court in Devendra Pratap Narain Rai Sharma v. State of U.P., AIR1962 SC 1334 (AIR at p.1337, para 10). The said ratio has no application to the facts in this case. In that case the incumbent was a regular employee and the dismissal from service was declared invalid. He was deemed to have been continued in service and therefore, he was entitled to the consequential benefits from his initial appointment.

3. At the time of termination, the petitioner was an ad hoc employee with

temporary status and he was put back into the status on his reinstatement. When he was medically examined he was appointed from the date of his reinstatement. In fact, they have done justice to him. Had it been a case of regular appointment, he could not be put back into the status from the date of his initial appointment according to the rules. He is entitled to the permanent status after reinstatement. That status was given to him. Accordingly, we do not find any illegality in the order passed by the Tribunal. However, by operation of Rule 2511(c) of IREM, the petitioner is entitled to the pensionary benefits treating the temporary service as a qualifying service for pensionary benefits."

सत्यमेव जयते

31.The Learned Counsel for the 1st Respondent refers to the Order dated 19.03.2002 in Original Application Nos.1319, 1320, 1330 to 1344, 1346 to 1356, 1357 to 1417, 1418 to 1421 of 2001, 1 to 11 of 2002, 17, 19 to 29, 30 to 35, 46 to 53, 72, 75, 77 to 83, 111, 115 and 116 of 2002 and Contempt Application Nos.10 to

13/2002, wherein at paragraph 38, it is observed as under:

"38. On the basis of the impugned order dated 20.12.2000 action has been taken to terminate the services of the applicants which according to us is not liable to be set aside. At the same time, we cannot close our eyes to the reality since all these applicants have joined the Department with the hope that their life is secured. Many of them discontinued their professional studies, some of them did not join the other Department for which offer has been made. By this order of termination, they are put to great hardship is of no doubt. But on the basis of sympathy and humanitarian ground alone we cannot give any direction. Even though we hold that the action of the respondents do not call for any interference, we are sure that the applicants will be considered whenever the ban is removed. We are also sure that the respondents will consider the case of the applicants on removal of the ban without any further process of selection and also giving due relaxation of age

and also in 25% vacancies (which are permitted to be filled up) after 1999.”

32. In the Rejoinder filed by the Petitioners, it was stated that the 1st Respondent/Applicant was initially engaged as Gramin Dak Sevak Packer, Villupuram Head Office in Pondicherry Postal Division with effect from 16.10.1971 and 2000, the 3rd Petitioner initiated action to fill up the vacancies in the cadre of Group 'D' for the year 2000 as per Recruitment Rules. Further, in terms of the Recruitment Rules which were in force, then, the recruitment of Group 'D' would be from GDS (Erstwhile ED Agents) of the Divisions, based on Seniority cum Fitness and accordingly, the 1st Respondent was considered based on the length of service and posted at Tindivanam Bazaar Sub Post Office and in the meanwhile, the Government of India orders to Ban Recruitment came into force.

33. At this juncture, the Learned Counsel for the Petitioners submits that the Government of India Orders to Ban Recruitment came into force and as per Ban Orders, all vacant posts ought to be filled up only after review and with the approval of the Ministry of Finance. As such, because of the Ban Orders, the 1st Respondent/

Applicant was offered the Ad hoc Appointment which he accepted and he was posted at Tindivanam Head Office by the Assistant Superintendent of Post Office, Tindivanam Sub Division as per Memo No.PF/KR/2000 dated 24.06.2000. In fact, the said letter mentioned that the appointment was purely on Ad hoc basis.

34.It is represented on behalf of the Petitioners that the 1st Respondent could not be regularised because he was not within 25% Direct Recruitment Quota and when the proposal for regularisation of appointments by the Chief Postmaster General Tamil Nadu Circle was taken up with the 1st Petitioner, the same was turned down and all the appointments including the 1st Respondent's regularisation was ordered to be terminated and accordingly, a show cause notice informing the proposals for termination dated 31.12.2001 was issued.

35.The Learned Counsel for the Petitioners points out that the the 1st Respondent/Applicant filed O.A.No.116/2002 before the 2nd Respondent/Tribunal assailing the show cause notice for termination and ultimately, the O.A. was dismissed on 19.03.2002. As a matter of fact, the 1st Respondent was terminated from service with effect

from 21.03.2002 by due process of Law. Only after termination of Adhoc Appointment, the 1st Respondent was posted as GDS and on receipt of approval of the Competent Authority to fill up the vacancies, instructions were issued by the Chief Postmaster General, Tamil Nadu Circle to all Divisional Heads to appoint the terminated Adhoc appointees of 1999 on the basis of merit and on roster points as per letter dated 24.06.2002 and as such, the regularisation was ordered in respect of all terminated Adhoc Appointees (including the 1st Respondent).

36.It is brought to the notice of this Court that on behalf of the Petitioners that the 1st Respondent was provided with a regular appointment as per proceedings dated 27.06.2002 by the 3rd Petitioner/Senior Superintendent of Post Offices, Pondicherry Division, Pondicherry as Group 'D' at Nellithope, where he joined on 01.07.2002 afternoon and ultimately, he retired from service on attaining the age of 60 years on 31.07.2010 afternoon.

37.In this connection, it is to be pointed out that the total service of the 1st Respondent in Group 'D' cadre from 02.07.2002 to 31.07.2010, after deducting the non-qualifying service of 7 days, is

8 years 23 days and since the qualifying service period is less than 10 years, the 1st Respondent was not eligible for Pension as per 49 of CCS (Pension) Rules, 1972. Apart from that, it is the stand of the Petitioners that the Respondent was provided with Service Gratuity of Rs.89,968/- as per Rule 50 of CCS (Pension) Rules, 1972 and the Retirement Gratuity of Rs.44,984/- was sanctioned to him as per Memo No.C-655 dated 13.08.2010.

38.The Learned Counsel for the Petitioners refers to Rule 6 of GDS (C&E) Rules, Gramin Dak Sevaks (Formerly ED) and contends that the service in GDS (ED) post shall not be eligible for pension and there is no provision in the rules to give weightage for the service rendered as EDDA/GDS for counting as qualifying service for grant of pension.

39.The Learned Counsel for the Petitioners refers to the Order dated 19.03.2002 in Original Application Nos.1319, 1320, 1330 to 1344, 1346 to 1356, 1357 to 1417, 1418 to 1421 of 2001, 1 to 11 of 2002, 17, 19 to 29, 30 to 35, 46 to 53, 72, 75, 77 to 83, 111, 115 and 116 of 2002 and Contempt Application Nos.10 to 13/2002, wherein at paragraphs 35 to 37, it is observed as follows:

"35.The ban order is even now in force. If we give a direction to regularise these applicants that will amounts to a decision against the policy of the Government. We have already upheld the policy decision of the Government that it is bona fide and the respondents are also justified in making appointments of the applicants only on adhoc basis. Once we hold that the ban order is valid, the question of regularisation also will not arise.

36.As per O.M. Dated 30.3.1988, adhoc appointment can be made to a maximum period of one year only. That period is over.

37.In Ashwani Kumar and others V. State of Bihar and Others (1997(2) SCC 1) it was held that appointment in excess of sanctioned post or vacancies are illegal since 'budgetary sanction' is a sine qua non. It was further held that question of confirmation or regularisation of an irregularly appointed candidate would arise if the

candidate concerned is appointed in an irregular manner or on adhoc basis against an available vacancy which is already sanctioned. But if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given it would be an exercise in futility." Hence, we cannot direct regularisation in these cases."

40. It is to be pointed out that 'Ad hoc Appointment' (being a precarious one) is made without reference to recruitment rules and by way of a stop gap arrangement for a very short period and the said appointment does not confer any service rights to the 'Holder of Post'. An 'Ad hoc Appointment' cannot be a Part of Cadre, though a temporary Appointment can be like that. Significantly, an 'Appointment' on 'Regular Basis' means Appointment not on 'Ad hoc' or stop gap or purely temporary basis as per decision ***K.Madhavan V. Union of India, AIR 1987 SC 2291.***

41.It is to be borne in mind that an 'Ad hoc Employee' is not regarded as a member of the cadre and as such, he has no claim of service rights including right to seniority to the post. At this stage, this Court aptly points out the decision of the Hon'ble Supreme Court in ***R.K.Trivedi V. Union of India, (1998) 9 SCC 58*** wherein it is held that where there are Statutory Recruitment Rules prescribing a particular mode of selection regularisation of employment could be effected/made only after going through the rigorous of the prescribed selection process and no shortcut to avoid it is permissible.

42.At the outset, it is to be remembered that the word 'Ad hoc' is a Latin term and whenever an appointment is stated to be an Ad hoc Appointment, it is purely a 'Transitory Appointment' or a fortuitous or a stop gap one. In short, the said Appointment is not a regular appointment and does not confer an indefeasible right on the holder of the post as per decision of the Hon'ble Supreme Court in ***Pooswamy M. V. Union of India, 1978 (2) SLR 334.*** Moreover, an 'Ad hoc Appointment' is an appointment for special and particular purpose to last for a particular period, as per decision of the Hon'ble Supreme Court in ***S.P.Vasudeva V. State of Haryana, AIR 1975 SC 2292.***

43. Suffice it for this Court to point out that the concept of 'Ad hoc Appointment' is that in an exigency, regular appointment by conducting examinations and holding interviews etc. is not possible due to shortage of time and till such time a regular appointment is made, an Ad hoc Appointment is made because of the exigency of an Administration. Also that, an 'Ad hoc Appointment' is made to a post but not to a cadre/service and is also not made in accordance with the provisions of the Recruitment Rules for 'Regular Appointment' as per decision ***State of Rajasthan V. Jagdish Narain Chaturvedi, AIR 2010 SC 157.***

44. At this stage, this Court aptly points out the decision of the Hon'ble Supreme Court in ***J & K Public Service Commission V. Dr. Narinder Mohan, AIR 1994 SC 1808 at special page 1813,*** wherein it is mentioned that 'A little leeway to make Ad hoc Appointments due to emergent exigencies does not clothe the executive Government with the power to relax the Recruitment Rules nor to regularise such appointment nor to claim such appointments to be regular or in accordance with rules'.

45. Apart from that, this Court refers to the decision of the Hon'ble Supreme Court in ***State of Haryana and others V. Shakuntla Devi, AIR 2009 Supreme Court 869***, wherein it is observed as follows:

"A Government employee enjoying a status indisputably must be recruited in accordance with Rules. The Family Pension Scheme in terms of paragraph 3 thereof is applicable to all regular employees in pensionable establishment, temporary or permanent who were in service. Thus, whether temporary or permanent, the employee must be regular employee which would mean employee appointed on a regular basis, i.e., in accordance with Rules. Ad hoc appointee is thus not entitled to family pension only because services of ad hoc employee was continued. Continuation of ad hoc employee would not mean that thereby his status has been changed. The status of an employee can only change either by reason of a contract or by reason of a statute."

46.As far as the present case is concerned, the 1st Respondent /Applicant was originally engaged as Gramin Dak Sevak Packer, Villupuram. In 2000, the 3rd Petitioner/Senior Superintendent of Post Offices, Pondicherry Division, Pondicherry took steps to fill up the vacancies in Group 'D' cadre for the year 2000 as per Recruitment Rules in terms of their Recruitment Rules which were in force, then, the recruitment of Group 'D' was to be from GDS (formerly ED Agents) of the Divisions, based on the Seniority cum Fitness. The 1st Respondent/Applicant was considered resting upon the length of service and was posted at Tindivanam Bazaar Sub Post Office. Because of the Ban on Recruitment Orders of the Union of India, the 1st Respondent was offered Ad hoc appointment and was posted at Tindivanam Head Post Office by the Assistant Superintendent of Post Office, Tindivanam as per Memo dated 24.06.2000. At this stage, one cannot brush aside a very candid fact that the said Letter dated 24.06.2000 clearly mentioned that the appointment of the 1st Respondent was purely on 'Ad hoc basis'

47.Inasmuch as the 1st Respondent/Applicant was not within 25% of 'Direct Recruitment Quota' in respect of the vacancies for the period from 01.01.2000 to 31.12.2000 which were approved for

filling up, he could not be regularised and when the proposal for regularisation of 'Ad hoc Appointments' by the Chief Postmaster General, Tamil Nadu Circle was taken up with the 1st Respondent/ Union of India represented by the Director General, Department of Posts, the same was negatived and all the Ad hoc Appointments (including the 1st Respondent/Applicant) were ordered to be terminated and accordingly, the 1st Respondent was issued with the show cause notice informing him as regards the proposal for termination through Memo dated 31.12.2001.

48. It is not in dispute that the 1st Respondent/Applicant projected O.A.No.116/2002 before the 2nd Respondent/Tribunal assailing the Show Cause Notice for termination and ultimately, the Original Application was dismissed on 19.03.2002. As a matter of fact, the 1st Respondent/Applicant was posted as GDS, after termination of Ad hoc appointment and consequent to the approval of the Competent Authority to fill up the vacancies, instructions were issued by the Chief Postmaster General, Tamil Nadu Circle to all the Divisional Heads to appoint the terminated Ad hoc Appointees of 1999 on the basis of merit and on roster points as per Letter dated 24.06.2002. As such, the regularisation was ordered in

respect of all terminated Ad hoc appointees including the 1st Respondent. The 1st Respondent was given the regular appointment by the 3rd Petitioner/Senior Superintendent of Post Offices, Pondicherry Division, Pondicherry as per Memo dated 27.06.2002 and was allotted to the Pondicherry South Sub Division and posted as Group 'D' at Nellithope where he joined on 01.07.2002 afternoon and retired from service 31.07.2010 afternoon on attaining the age of 60 years.

49. Be it noted that Rule 6 of the GDS (Conduct and Engagement) Rules enjoins as under:

"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."

Further, the Director-General's Instructions Nos.1 and 2 runs as under:

"(1) Payment of ex gratia gratuity.- The question of grant of some kind of purely ex gratia monetary grant of ED Agents working in the Indian Posts and Telegraphs Department on termination

of their services has been under consideration for a long time. It has been decided as follows:

1.ED Agents as defined in P & T Extra-Departmental Agents (Conduct and Service) Rules, 1964, whose services are terminated otherwise than (i) for unsatisfactory work or (ii) as a measure of disciplinary action or (iii) in consequence of their being appointed in a regular post under the P & T Department, may be sanctioned monetary grants termed as 'Gratuity', provided that they have put in not less than ten years of continuous satisfactory service as ED Agents.

2.'Continuous Service' for the purpose of this order shall mean only such continuous service rendered in any capacity as an ED Agent."

50.Furthermore, the Instruction Nos.3 to 6, reads as under:

"3.In determining the period of continuous service, periods where an ED Agent himself does not personally attend to the duties assigned to him shall be treated as breaks in service unless each such period is of a duration of 90 days or less and the absence from his duties is authorized by the written order of the appointing authority.

4.Unauthorized absence or

authorized absence in excess of 180 days shall constitute a break which will have the effect of forfeiting all past service for the grant of gratuity.

5. An ED Agent, who becomes eligible for the grant of gratuity as indicated above, may be granted at the rate of half month's basic allowance as drawn by him immediately before the termination of service for each completed year of service, subject to a maximum of Rs.60,000 or 16 ½ months' basic allowance last drawn, whichever is less.

6. Gratuity admissible in accordance with the above conditions shall be purely ex gratia.

[D.G., P. T., Letter Nos.43-48/64-Pen., dated the 16th January, 1968 as amended from time to time including D.G., Posts, Lr.No.6-1/2009-PE. II, dated the 9th October, 2009.]”

51. It may not be out of place for this Court to make a relevant mention that Rule 49 of CCS (Pension) Rules, 1972 speaks of 'Amount of Pension' which runs as under:

"49.{1.Substituted vide G.I., Dept. of P & P.W., Notification No.2/18/87-P. & P.W. (PIC), dated the 20th July, 1988, published as S.O.No.2388 in the Gazette of India, dated the 6th August, 1988 and takes effect from 1st January, 1986.}

(1)In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of ten years, the amount of service gratuity shall be calculated at the rate of half month's emoluments for every completed six monthly period of qualifying service.

(2)(a) In the case of a Government servant retiring in accordance with the provisions of these rules after completing qualifying service of not less than thirty-three years, the amount of pension shall be calculated at fifty per cent of average emoluments, subject to a maximum of four thousand and five hundred rupees per mensem.]* See GID(4) below this Rule for enhanced limit from 1-1-2006.

***Full Pension from 2-9-2008. - See GID(4) below this Rule. (b) In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of thirty-three years, but after completing qualifying service of ten years, the amount of pension shall be proportionate to the amount of pension admissible under Clause(a) and in no case the amount of pension shall be less than {1.Substituted vide G.I., Dept. of P & P.W., Notification No.2/18/87-P. & P.W. (PIC), dated the 20th July, 1988,**

published as S.O.No.2388 in the Gazette of India, dated the 6th August, 1988 and takes effect from 1st January, 1986.} [Rupees three hundred and seventy-five] per mensem;

(c) notwithstanding anything contained in Clause (a) and Clause (b), the amount of invalid pension shall not be less than the amount of family pension admissible under sub-rule (2) of Rule 54.

(3) In calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated as a completed one half-year and reckoned as qualifying service.

(3) In calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated as a completed one half-year and reckoned as qualifying service.

(4) The amount of pension finally determined under Clause (a) or Clause (b) of sub-rule (2), shall be expressed in whole rupees and where the pension contains a fraction of a rupee, it shall be rounded off to the next higher rupee."

52. Rule 50 of CCS (Pension) Rules, 1972 deals with 'Retirement/Death Gratuity', which reads as follows:

"50. Retirement/Death Gratuity

(1)(a) A Government servant, who has completed five years' qualifying service and has become eligible for service

gratuity or pension under Rule 49, shall, on his retirement, be granted [retirement gratuity] equal to one-fourth of his emoluments for each completed six monthly period of qualifying service, subject to a maximum of 16 ½ times the emoluments.

(b) If a Government servant dies while in service, the death gratuity shall be paid to his family in the manner indicated in sub-rule(1) of Rule 51 at the rates given in the Table below, namely:-

Length of qualifying service gratuity	Rate of death
(i) Less than 1 year	2 times of emoluments
(ii) One year or more but less than 5 years ...	6 times of emoluments
(iii) 5 years or more but less than 20 years ...	12 times of emoluments
(iv) 20 years or more ...	Half of emoluments for every completed six - monthly period of qualifying service subject to a maximum of 33 times of emoluments.

Provided that the amount of retirement gratuity or death gratuity payable under this rule shall in no case exceed {2.Substituted by G.I., Dept. of P & P.W., Notification No.7/3/95-P. & P.W.(F), dated the 17th March, 1997,

published as GSR NO.177 in the Gazette of India, dated the 5th April, 1997. This takes effect from 1st April, 1995. [two lakh and fifty thousand rupees:]*

Provided further that where the amount of retirement or death gratuity as finally calculated contains a fraction of a rupee, it shall be rounded off to the next higher rupee.]

(2) If a Government servant, who has become eligible for a service gratuity or pension, dies within five years from the date of his retirement from service including compulsory retirement as a penalty and the sums actually received by him at the time of his death on account of such gratuity or pension including ad hoc increase, if any, together with the retirement gratuity admissible under sub-rule(1) and the commuted value of any portion of pension commuted by him are less than the amount equal to 12 times of his emoluments, a residuary gratuity equal to the deficiency may be granted to his family in the manner indicated in sub-rule(1) of Rule 51."

53.Also, in the **Order made in C.W.No.5930 of 1999 dated 28.01.2000 [between Amit Yadav and others V. Delhi Vidyut Board]**, at paragraph 8, it is observed as follows:

"8.In the case of Director, Institute of Management Development, U.P. Vs . Smt. Pushpa Srivastava MANU/SC/0409/1992 : (1993) ILLJ 190 SC, while considering the question of regularisation of the appointment purely

ad hoc and contractual for a limited period, it has been held that "in case of appointment purely ad hoc and contractual for a limited period, the right to remain in the post comes to an end after the expiry of the period. Director of the High Court reinstating the respondent and regularising her services set aside." The principle laid down in the case of Director, Institute of Management Development, U.P. Vs. Smt Pushpa Srivastava (supra) will be applicable with all force to the present case for the reason that the question before the Supreme Court was of regularisation of the service where the appointment was purely ad hoc and contractual for a limited period. As pointed out above, in the instant case also, the appointment of the petitioners is purely ad hoc and contractual for a period of six months and the contract has admittedly ended by efflux of time. When the right to continue on any post is purely contractual for a fixed period, such a right would come to an end on expiry of such period."

54. The 1st Respondent/Applicant was sanctioned with the Service Gratuity of Rs.89,968/-, as sanctioned by the 3rd Respondent in Memo dated 13.08.2010. Also that, the 1st Respondent's Retirement Gratuity of Rs.44,984/- was sanctioned to him as per proceedings dated 13.08.2010.

55.A mere running of the eye over the ingredients of Rule 49 of CCS (Pension) Rules, 1972 latently and patently indicates that the minimum qualifying service was required for considering 'Pension' is 10 years. It is to be remembered that as per Rule 6 of GDS (C & E) Rules, Gramin Dak Sevaks (then ED), the 1st Respondent/Applicant are not entitled for pension. Besides these, for the services rendered as EDDA/GDS has to count as qualifying service for grant of pension, there is no role to grant weightage for the service rendered as EDDA/GDS.

56. There is no second opinion of an established fact that in the present case, the 1st Respondent/Applicant was appointed on 'Ad hoc' Basis with effect from 26.06.2000 clearly mentioned that his appointment was purely on Ad hoc basis and does not confer any right for regular absorption as Group 'D'. Therefore, for the period from 26.06.2000 to 20.03.2002 the service rendered by the 1st Respondent/Applicant was to be taken as Qualifying Service.

57. One cannot ignore a fact that the total service of the 1st Respondent in Group 'D' cadre for the period from 02.07.2002 to 31.07.2010 after deducting the non-qualifying service of 7 days, is

only 8 years and 23 days. Therefore, it is crystalline clear that since the period of qualifying service is less than 10 years, the 1st Respondent is not entitled to claim Pension in accordance with the Rule 49 of CCS (Pension) Rules, 1972. Viewed in that perspective, the direction issued by the 2nd Respondent/Tribunal in directing the Respondents (Writ Petitioners) to count the Ad hoc service rendered by the Applicant from 26.06.2000 to 21.03.2002 as qualifying service and to process his pension case accordingly etc.' are clearly unsustainable in the eye of Law and they are set aside by this Court, to promote substantial cause of Justice.

58. In fine, the Writ Petition is allowed. The Original Application filed by the 1st Respondent/Applicant is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

[M.V., J.] [P.R.M., J.]
27.02.2019

Speaking Order : Yes

Index : Yes
Internet : Yes

Sgl

M.VENUGOPAL, J.
AND
P.RAJAMANICKAM, J.

Sgl

To

The Registrar,
The Central Administrative Tribunal,
Madras Bench, Chennai – 600 104.



ORDER in
W.P.No.2290 of 2018

WEB COPY

27.02.2019