

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.10.2019

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE N.SESHASAYEE

WP.No.28964/2019 & WMP.No.28711/2019

1. Union of India
rep.by Superintendent of Post Office
Ramanathapuram Division,
Ramanathapuram 623 501.
2. The Post Master
Paramakudi HPO
Pincode 623 707.Petitioners

Versus

- R.Kanagaraj [Deceased]
1.Sugirdha Jesi Rani
2.Sundar
3.Rajesh
4.Jhansi Rani
- 5.The Central Administrative Tribunal
rep.by its Registrar
Madras Bench
High Court, Chennai 600 104.Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorari calling for the records relating to the order passed by the 5th respondent Tribunal in OA.No.211/2013 dated 30.12.2014 and quash the same.

For Petitioners: Mr.Venkataswamy Babu
For RR 1 to 4 : Mr.R.Malaichamy

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.,]

- (1)By consent, the writ petition, is taken up for final disposal. Mr.R.Malaichamy, learned counsel accepts notice on behalf of the respondents 1 to 4 / legal representatives of the deceased Original Applicant Kanagaraj.

- (2) The official respondents in O.A.No.211 of 2013 are the writ petitioners herein and challenging the legality of the order dated 30.12.2014 made in OA.No.211 of 2013, filed by the deceased Original Applicant, had filed the present writ petition.
- (3) The facts leading to the present round of litigation, have been narrated in detail and in extenso in the impugned order dated 30.12.2014 in OA.No.211 of 2013 passed by the Central Administrative Tribunal, Chennai Bench at Chennai and hence, it is unnecessary to restate the facts once again.
- (4) The Original Applicant joined the services of the writ petitioners/official respondents as Extra Departmental Agent [EDA], presently known as "'Gramkin Dak Sevak'" [GDS] in the year 1974. The Original Applicant had participated in the Limited Departmental Competitive Group "'D'" examination and was posted as Group "'D'" official in the year 1979. Subsequently, he participated in the Competitive Examination and was promoted as Postman and once again, participated in the Limited Departmental Examination in the year 1984 and got his promotion as Postal Assistant in the year 1988 and he attained the age of superannuation and retired from service on 31.10.2012.
- (5) The Original Applicant had approached the Central Administrative Tribunal, Madras Bench, with a grievance that, on an earlier occasion, he was granted 3rd MACP benefit and was also paid the arrears of Pay and Allowance. But, later on, a sum of Rs.90,000/- was recovered from him and subsequently, he was granted 3rd MACP benefit, vide order dated 29.04.2011 and was allowed to draw the allowances with effect from 01.09.2008 with the Grade Pay being increased from Rs.4200/- to Rs.4600/- in the Pay Band of Rs.9030-34800 till he retired from service on 31.10.2012. The 1st respondent has sent a communication dated 25.10.2012 to the 2nd respondent in the Original Application stating that the Original Applicant was ineligible to get the 3rd MACP benefit by upgradation with effect from 01.09.2008 and without putting the Original Applicant on notice, a sum of Rs.1,49,122/- was recovered from him out of the Gratuity amount due and payable vide order dated 05.11.2012 which came to be communicated to the Original Applicant after his retirement on 31.10.2012. The Original Applicant, challenging the legality of the said proceedings, filed the above said Original Application and it was entertained.
- (6) The official respondents/writ petitioners herein, in their reply, took a stand that the Original Applicant's promotion from Group "'D'" to Postman was the first promotion and then,

his promotion from Postman cadre to Postal Assistant Cadre was the second promotion and he also got the Third Financial Upgradation and since he had enjoyed three upgradations by virtue of two promotions/one financial upgradation under TBOP, he was not entitled for MACP-III benefit. During the course of argument before the Tribunal, attention was invited to the judgment rendered by the Rajasthan High Court dated 10.08.2015 in a Division Bench Civil Writ Petition No.11336/2012 [Union of India through Secretary, Government of India, Ministry of Communication, Department of Posts, New Delhi and 2 Others V. Banwar Lal Regar] and also connected batch of writ petitions, in and by which, challenge was made to the order passed by the Central Administrative Tribunal, Jodhpur Bench.

- (7) The Rajasthan High Court found that the Original Applicants faced the examination and though it may be the limited competitive examination, found that it is nothing but a direct recruitment and subsequently, they joined the post as Postal Assistants was not at all in the nature of promotion and consequently, their services for the grant of benefits under the Modified Assured Career Progress as to be counted only from the date they were appointed as Postal Assistants/Sorting Assistants and the services rendered by them in the earlier post prior to the said appointment, are absolutely inconsequential for the purpose of granting MACP benefit. The Tribunal, in the light of Rajasthan High Court judgment, has dismissed the writ petitions filed by the official respondents therein.
- (8) The official respondents therein, aggrieved by the dismissal of the batch of writ petitions, filed SLP [C] D.No.23260/2018 before the Hon'ble Supreme Court of India and vide order dated 10.08.2019, the Hon'ble Apex Court has dismissed the Special Leave Petition.
- (9) Mr. Venkataswamy Babu, learned counsel appearing for the petitioners/official respondents in the Original Application would submit that the Original Applicant became Postal Assistant through Limited Departmental Examination in the year 1988 and retired from service on 31.10.2012 and in order to qualify for the 3rd MACP benefit, he should have completed 30 years from the date of assuming the charges as Postal Assistant in the year 1988 and admittedly, he retired before that on 31.10.2012 and as such, he was not entitled for the 3rd MACP benefit and therefore, the Recovery Order was perfectly in order.
- (10) Per contra, Mr. Malaichamy, learned counsel appearing for the Legal Representatives of the deceased Original Applicant has invited the attention of this Court to the order dated

04.02.2015 in WP.No.30629/2014 [Union of India represented by its Secretary, Director General, Department of Post, New Delhi and 2 Others V. D.Sivakumar and another] and would submit that similar challenge was made by the official respondents to the order dated 14.03.2003 in OA.No.1088 of 2011 passed by the Central Administrative Tribunal, Madras Bench and it came to be dismissed dated 14.03.2013 and the above cited writ petition challenging the said order also ended in dismissal vide order dated 04.12.2015. The order of dismissal was also put to challenge by the official respondents in SLP [C] No.4848 of 2016. It was also dismissed on 16.08.2016 and as such, the present writ petition lacks merit. It is the further submission of the learned counsel for the respondents 1 to 4 / Legal Representatives of the deceased Original Applicant that admittedly, the impugned order which is the subject matter of challenge in this writ petition, came to be passed as early as on 30.12.2014 and subsequently, the Original Applicant died and the Legal Representatives are brought on record and nearly after five years, a challenge is made to the said order and therefore, it is also hit by delay and laches and prays for dismissal of the writ petition.

(11) This Court has carefully considered the rival submissions and also perused the materials placed before it.

(12) The Tribunal, in the impugned order, has placed reliance upon the common order of the High Court of Rajasthan [cited supra] and by way of subsequent development, the Special Leave Petition, challenging the said order, also came to be dismissed. The Original Applicant died on 26.10.2016 and nearly after five years from the date of impugned order, the present writ petition came to be filed. It is also the submission of the learned counsel for the writ petitioners/official respondents that in the light of the fact that the Original Applicant retired from service and not completed 30 years and as such, he is not entitled for the 3rd MACP benefits, deserves no consideration for the reason that the writ petitioners who are the official respondents, are guilty of delay and laches.

(13) It is also to be noted at this juncture that, with regard to the alleged payment of 3rd MACP benefit, the Original Applicant did not play any role in the form of any misrepresentation and after the demise of the Original Applicant on 26.10.2016, the alleged excess amount paid, is sought to be recovered from the legal representatives of the deceased Original Applicant.

(14) It is also a well settled position of law that despite the case is having merits, if the concerned party failed to approach the Court within reasonable time, the claim can be rejected and thereby, threatened to expose the interest of the 3rd parties to the litigation, putting the Original Applicant to difficulty.

(15) Admittedly, the impugned order which is the subject matter of challenge, came to be passed nearly five years back and despite the fact that the official respondents/writ petitioners herein are having facilities at their disposal, they failed to approach the Court within a reasonable time and filed the present writ petition only on 11.06.2019. Therefore, the writ petitioners/official respondents are guilty of delay and laches and as such, they are not entitled to any relief in this writ petition.

(16) In the result, the writ petition stands dismissed confirming the order dated 30.12.2014 passed in OA.No.211 of 2013 by the Central Administrative Tribunal.

(17) After the dismissal of the writ petition, it is brought to the knowledge of this Court by the respective learned counsel for the parties that the excess payment made, has already been recovered and therefore, the writ petitioners/official respondents are directed to repay the same to the Legal Representatives of the deceased Original Applicant/Respondents 1 to 4 herein, within a period of four weeks from the date of receipt of a copy of this order and the official respondents/writ petitioners herein, are also directed to refix the pension of the deceased Original Applicant accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

-s/d-

सत्यमेव जयते
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

AP

To

1. The Superintendent of Post Office
Union of India
Ramanathapuram Division,
Ramanathapuram 623 501.

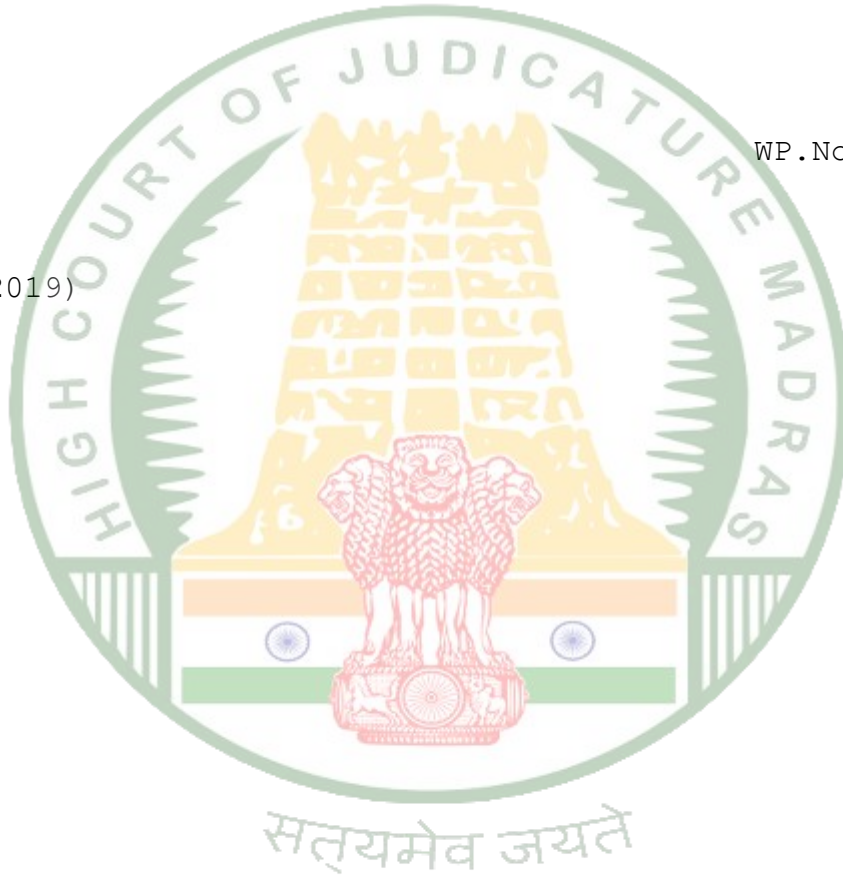
2.The Post Master
Paramakudi HPO
Pincode 623 707.

3.The Registrar
The Central Administrative Tribunal
Madras Bench
High Court, Chennai 600 104.

+1 CC to Mr. Venkataswamy Babu, Advocate sr 84983.
+1 CC to Mr.R.Malaichamy, Advocate sr 84756.

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SS(CO)
SP(08/11/2019)



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