

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.03.2019

PRONOUNCED ON : 08.04.2019

CORAM

THE HON'BLE Mr. JUSTICE M.VENUGOPAL
And

THE HON'BLE Mr. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.5074 of 2016
and
W.M.P.No.4414 of 2016

N.Shanmugam

.. Petitioner

V.

- 1.Union of India,
Rep. By the Secretary,
Department of Posts,
Sansad Marg, Dak Bhavan,
New Delhi - 110 001.
- 2.The Chief Postmaster General,
Tamil Nadu Circle,
Chennai - 600 002.
- 3.The Postmaster General,
Chennai City Region,
Chennai - 600 002.
- 4.Superintendent of Post Offices,
Tiruvannamalai Division,
Tiruvannamalai-606 601.
- 5.The Registrar,
Central Administrative Tribunal,
Chennai - 600 104.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the order of the 5th Respondent Tribunal which is made in O.A.No.1453 of 2010 dated 13.12.2012 in so far as it relates to directing the Respondents to place the Petitioner name before the Circle Relaxation Committee to be held in the immediate future and consider his case for appointment on compassionate ground in accordance with

the guidelines and instructions and quash the same consequently direct the Respondents 1 to 4 to regularising the service of the Petitioner from the date of approval i.e. 23.11.1993 as in the cases of Smt.Kalavathy and others with all attendant benefits.

[Prayer amended as per order dated 22.03.2019 in WMP.No.21704 of 2018]

For Petitioner : Mr.R.Malaichamy

For Respondents 1 to 4 : Mr.V.Balasubramanian, SPC
For Mr.A.Veeramani, CGC

For 5th Respondent : Tribunal

O R D E R

M.VENUGOPAL, J.

The Petitioner has filed the present Writ Petition seeking to call for the records relating to the order of the 5th Respondent/ Tribunal in O.A.No.1453 of 2010 dated 13.12.2012 in so far as it relates to directing the Respondents to place the Petitioner name before the Circle Relaxation Committee to be held in the immediate future and consider his case for appointment on Compassionate Ground in accordance with the Guidelines and Instructions and to quash the same and consequently direct the Respondents 1 to 4 to regularising the service of the Petitioner from the date of approval i.e. 23.11.1993 as in the cases of Smt.Kalavathy and others with all attendant benefits.

2.Heard both sides.

3.The Petitioner's father died in harness on 08.11.1991 while he was serving as Group 'D', Polur S.O., Tiruvannamalai Division. The Petitioner had studied upto 5th standard. Because of his father's death, his family was in penury condition. Hence, he made representations to the Competent Authority requesting to consider his case for an 'Appointment' on 'Compassionate Ground'. It was considered by the Selection Committee under the Chairmanship of the 2nd Respondent and he was selected for appointment to the cadre of Group-D in the year 1993 itself.

4.Since there was no vacancy in Tiruvannamalai Division, the Petitioner's name was included in the approved list for appointment on Compassionate Grounds. Subsequently, he was engaged in the leave vacancies in Group-D cadre, Tiruvannamalai

Division vide Memo dated 10.05.1994 issued by the 4th Respondent. During the year 2001, the Department discontinued the 'Wait List'. Therefore, some of the affected persons filed Original Applications before the 5th Respondent/Central Administrative Tribunal, Chennai and the said Applications were allowed. However, the Department filed Writ Petitions before this Court and they were dismissed. Thereafter, the Department projected a Special Leave Petition before the Hon'ble Supreme Court of India in C.A.No.7773 of 2009, which was disposed of on 30.07.2010. As per order of the Hon'ble Supreme Court, around 202+30 wait list candidates were appointed from their date of approval for appointment on Compassionate Grounds.

5.The Petitioner after coming to know the fact that waiting list candidates were appointed from the date of their approval for appointment on Compassionate Grounds, he made a request before the Competent Authorities to regularise his service in Group-D cadre from the date of approval of the appointment dated 22.11.1993, but it was rejected by the 2nd Respondent, by an order dated 30.08.2010. Hence, he filed O.A.No.1453 of 2010 before the Tribunal. As a matter of fact, the Tribunal allowed similar nature of cases with directions to regularise their services from the date of approval for appointment.

6.Further, in Petitioner's case, the Tribunal, through an order dated 13.12.2012, directed the Respondents to consider his case for appointment on Compassionate Ground in accordance with the 'Guidelines of DoPT'. More than hundred candidates filed Original Applications like him before the Tribunal and sought regularisation of their services from the date of approval for appointment on Compassionate Grounds. The said Original Applications were allowed by the Tribunal and the Writ Petitions filed by the Department before this Court were dismissed thereby the candidates were regularised by the Department. He is the only aggrieved person got appointment afresh and hence, he is filing the present Writ Petition before this Court.

7.Earlier, the 5th Respondent/Tribunal in O.A.No.1453 of 2010 filed by the Writ Petitioner as an Applicant at paragraphs 11 and 12, had observed the following and disposed of the Original Application:

"11. The applicant has relied upon the Judgment of the Hon'ble Supreme Court in the case of Inderpal Yadav (1985 (2) SCC 648). The grievance of the applicant for appointment on compassionate ground was initially kept in the waiting list but he is asking for regularization. Under the regular recruitment rules, there is no provision for appointment on compassionate ground. Under

the facts and circumstances of the case, the applicant is not entitled for regularization as contended by him in view of the Judgment of the Hon'ble Supreme Court in the case of N.Nallavan (supra).

".... It was held "to regularise the service of 202 respondents and 37 interlocutory applicants who were working in the Department as on 27.10.2009 based on the list submitted by the Department with specific observation that the findings recorded by this Tribunal as well as by the Hon'ble High Court with regard to the interpretation of OM and circulars of the Department are set aside and those findings and observations shall not be treated as precedent for the purpose of any other case or cases that may be binding. The Judgment of the Hon'ble Supreme Court is applicable only to those persons who are party to the proceedings.

9. I have carefully considered the decision of the Hon'ble Supreme Court. Admittedly the applicant was not a party to the earlier OA.862/2001/ The Hon'ble Supreme Court protected the interest of the respondents before the Hon'ble Supreme Court. There were 202 and 37 respondents. When the applicant did not approach the Tribunal or did not implead himself as the party to the SLP before the Hon'ble Supreme Court, the benefit of the Judgment of the Hon'ble Supreme Court cannot be extended to the applicant. The applicant is not challenging the orders of the Postal Directorate dated 25.7.2001 and subsequent order dated 8.8.2001 which was issued by the Post Master General, Southern Region. The services of the applicant has been disengaged as per the instructions of the PMG, Southern Region dated 8.8.2001. Unless the applicant challenges the said order, the relief of the applicant cannot be considered. Though a notice was not given to the applicant before disengaging his services, he has no legal right for appointment on compassionate ground as held by the Hon'ble Supreme Court in the Judgment referred to in para 5 supra.

10. For the foregoing reasons, I am of the considered view that the applicant has no

legal right to continue in service. The decision taken by the respondents for disengaging the services of the applicant is in order. In the facts and circumstances of this case, the applicant has failed to establish his case for grant of the relief". As held by the Hon'ble Supreme Court, the applicant has no legal right for appointment on compassionate ground. But he is eligible for appointment on compassionate ground for that the Circle Relaxation Committee has already approved and kept his name in the list. When the respondents are extracting the service of the applicant for the last 17 years, he is under the hope of getting permanent job in the department. The applicant is entitled for appointment on compassionate ground.

12. For the foregoing reasons, I am of the considered view that the applicant has not made out a case for grant of relief of regularization and quash the order dated 30.8.2010. Since the applicant has been considered for appointment on compassionate ground, his case will be considered only for appointment on compassionate ground. In the relief, the applicant has sought for direction to the respondents to appoint him as regular Group 'D' on par with his juniors, but however, I mould the relief, and accordingly, I direct the respondents to place the name of the applicant before the Circle Relaxation Committee Meeting to be held in the immediate future and consider his case for appointment on compassionate ground in accordance with the guidelines and instructions for appointment on compassionate ground issued by the DOP&T with regard to relaxation of 5% quota falling under the direct recruitment. Till such consideration, the engagement of the applicant in short term leave vacancies shall be continued."

8. The Learned Counsel for the Petitioner submits that the Petitioner was selected to the post of MTS & allotted to Madurai Division by the 2nd Respondent/Chief Postmaster General, Chennai through an order dated 24.12.2013 and in the said order, a condition was imposed to acquire minimum educational qualification within five years from the date of appointment.

Being dissatisfied with the said order, in regard to acquire minimum qualification, the Petitioner filed O.A.No.1006 of 2015 before the 5th Respondent/ Tribunal.

9.The plea of the Petitioner is that his case was considered in the year 1993 by the 2nd Respondent and selected him to the post of Group-D/MTS. As such, he is entitled to the similar benefit as in the cases of Smt.Kalavathy and others. Because of poverty and family conditions, the Petitioner accepted the post offered by the Department and he is working at Madurai as MTS. In this regard, the grievance of the Petitioner is that the Tribunal instead of directing the Respondents in O.A.No.1453 of 2010 to regularise his service from the date of approval of his case, had directed the authorities to consider his case afresh. However, in respect of all other cases which are similarly placed like him, their cases were decided with directions to regularise their services from the date of approval for appointment on Compassionate Grounds.

10.The Learned Counsel for the Petitioner contends that the Petitioner was selected to the cadre of Group 'D'/MTS on Compassionate Ground during the year 1993 itself and as such, directing the authorities to consider the Petitioner's case afresh by the 5th Respondent/Tribunal as per order dated 13.12.2012 in O.A.No.1453 of 2010 is an arbitrary and illegal one.

11.The Learned Counsel for the Petitioner submits that the 5th Respondent/Tribunal had taken a different view in respect of the Petitioner when it had allowed similar nature of cases and that apart, after dismissal of the Writ Petitions filed by the Respondents, they had complied with the relevant orders.

12.The Learned Counsel for the Petitioner refers to the Memo dated 10.05.1994 of the 4th Respondent/Superintendent of Post Offices, Tiruvannamalai Division wherein the Writ Petitioner's name finds a place by mentioning that as a candidate approved on Compassionate Grounds for an Employment in Group 'D' cadre as per Office Letter dated 22.11.1993 and waiting for absorption was attached to 'All places in Tiruvannamalai Division'.

13.The Learned Counsel for the Petitioner points out to the Affidavit filed on behalf of the 1st Respondent/Union of India in Civil Appeal No.7773 of 2009 [Union of India V. M.Nallavan] wherein at paragraphs 3 and 4, it is observed as under:

"3.Thereafter the matter was considered by the Department and after examining the issue on human considerations following view has been approved:-

A. That out of 204 respondents, in all 202 respondents are working in the Department against short term/leave vacancies. The Department after careful consideration has decided that these respondents can be accommodated against compassionate appointment vacancies that have been kept aside under 5% of direct recruitment vacancies for compassionate appointment for the years 2000-01 to 2009 as per DOP & T Guidelines on the subject. However, in the PA/SA cadre, the number of vacancies is not enough to accommodate all the respondents approved for PA/SA cadre. The number of vacancies earmarked for this period is 113 whereas the number of respondent is 152. Therefore, as a one time measure, the Department is willing to accommodate these respondents against residual vacancies of Departmental quota if available.

B. So far as 2 remaining out of the 204 respondents are concerned they have already accepted "GDS post" and are working against said posts. As they are already working in these posts and are not working against short term/leave vacancies the Department is of the view that their case for regularisation may not be considered.

C. That in view of the above, the Tamil Nadu Circle will also not hold any Circle Relaxation Committee meeting for the period from 2000-01 to 2009 for considering compassionate appointment against 5% of Direct Recruitment vacancies so as to absorb the backlog.

4. That in view of the above mentioned facts and circumstances this Hon'ble Court may be pleased to set aside the impugned order of the High Court regarding its finding as to determination of annual vacancy. This Hon'ble Court may further be pleased to record the above mentioned view of the Department while setting aside the impugned judgment and may be pleased to direct that the respondents herein will be absorbed/regularised as per the statement made in above-mentioned para of this affidavit."

14.The Learned Counsel for the Petitioner relies on the order of the Hon'ble Supreme Court in Civil Appeal No.7773 of 2009 dated 30.07.2010 wherein it is, among other things, observed as under:

".... It is evident from the affidavit that the entire matter was reconsidered by the Department and upon such re-examination based on humanitarian considerations, found that out of 204 respondents in all 202 respondents working in the Department against short term/leave vacancies can be accommodated against compassionate appointment vacancies for the years 2000-01 to 2009 as per the departmental guidelines. However, in the case of Postal Assistants (PA) and Sorting Assistants (SA) cadre, according to the Ministry, the number of vacancies is not enough to accommodate all of them in the cadre. It is stated that the number of vacancies earmarked for this period is only 113 whereas the number of respondents claiming the relief is 152. However, it is stated that as a one time measure, the Department is willing to accommodate them against residual vacancies of the Department. The statement made in the affidavit is made part of the record directing the respondents to act upon the same.

In the circumstances, the appellants are directed to regularize the services of all the 202 respondents who are working in the Department against short term/leave vacancies with effect from their date of appointment. However, the respondents shall not be entitled for payment of any arrears on account of such regularisation. But their pay and pensionary benefits are protected.

In view of this order, it is made clear that the findings recorded by the Tribunal and as well as the High Court with regard to the interpretation of office memorandums and circulars of the Department are set aside and those findings and observations shall not be treated as precedent for the purpose of any other case or cases that may be pending."

15.The Learned Counsel for the Petitioner relies on the Division Bench Order of this Court dated 30.09.2013 in

W.P.No.24535 of 2013 [between Union of India V. S.Subramani]
wherein at paragraphs 10 to 13 it is observed as follows:

"10. In view of the above pronouncements, we hold that similarly placed persons are bound to be treated equally without discrimination, which is a fundamental right guaranteed under Article 14 of the Constitution of India.

11. The learned counsel for the petitioner argued that the order passed by invoking the power exercised under Article 142 of the Constitution of India, cannot be exercised by this Court. The Supreme Court in the decision reported in (1995) 6 SCC 749 (B.C.Chaturvedi v. Union of India) approved the Full Bench judgment of the Orissa High Court reported in AIR 1992 Orissa 261 (Krishna Chandra Pallai v. Union of India) and held that the High Court being a Court of plenary jurisdiction, has inherent power to do complete justice between parties similar to Supreme Court's power under Article 142 of the Constitution of India. In the decision reported in (1993) 4 SCC 269 (Union of India and Others v. R.Reddappa and Another) the Hon'ble Supreme Court held that once the Court is satisfied of injustice or arbitrariness, then the restrictions, self-imposed or statutory, stands removed and no rule of technicality or exercise of power can stand in way of rendering justice. Giving equal treatment to similarly placed persons without discrimination is the fundamental right guaranteed in the Constitution and the law Courts are bound to protect the said right.

12. Applying the said judgments to the facts of this case, and having regard to the undisputed fact that the first respondent was appointed in 1995 on compassionate ground due to the demise of his father, who was a postman and he is continuing in service as on date for over 18 years, we are of the view that the Tribunal has rightly allowed the application filed by the first respondent.

13. There is no merit in the writ petition and the same is dismissed in limine. It is made clear that the first respondent is to be regularised on the same terms and

conditions on which the 202 similarly placed persons were granted regularisation by order dated 30.8.2010, within four weeks from the date of receipt of copy of this Order. Connected miscellaneous petition is also dismissed."

16.Further, the Learned Counsel for the Petitioner cites the Division Bench Orders of this Court dated 01.10.2013 in W.P.No.22333 of 2011 [between B.Jayalakshmi V. Union of India, represented by the Chief Postmaster General, Chennai and 5 others] wherein at paragraph 14, a direction was issued to the 1st Respondent therein to regularise the service of the Petitioner and Respondents 4 to 6 therein, on the same terms and conditions, within a period of four weeks from the date of receipt of copy of this order.

17.Also, the Learned Counsel for the Petitioner places reliance on the Division Bench Order of this Court dated 20.06.2014 in W.P.No.16041 of 2014 [between Union of India V. Damodaran A.V. and others] wherein at paragraph 10, it is held as follows:

"10.The Central Administrative Tribunal rightly followed the said judgment and allowed the original application. We are unable to find any merit to entertain the writ petition and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed."

18.The Learned Counsel for the Petitioner brings it to the notice of this Court that the 2nd Respondent/Chief Postmaster General, Chennai through Memo No.REP/34-88/CAT/10-II dated 28.03.2014 had observed the following:

"Accordingly, I am directed to convey that the Chief Postmaster General, Tamilnadu Circle, Chennai 600 002 is pleased to allot the following candidate, who was approved under relaxation of recruitment rules, for regularization of his service in postman cadre, from the date of his initial engagement. Further action may be taken to appoint the candidate after observing all usual formalities, training etc.

Name of the candidate (Shri)	Community	Post to which initially engaged	Dn. in which working	Date from which appointment is to be regularised	Name of the Dn./unit to which now allotted
S.Subramani	UR	Postman	Dindigul	15.12.1995	Madurai Dn.,

19.The Learned Counsel for the Petitioner refers to the order of the Hon'ble Supreme Court in Petition(s) for Special Leave to Appeal CC.No.18922 of 2014 [between Union of India and others V. Justin Sathiaseelan and others] wherein the delay was condoned and ultimately, the Special Leave Petition was dismissed with an observation that no ground for interference was made out in exercise of jurisdiction under Article 136 of the Constitution of India.

20.The Learned Counsel for the Petitioner relies on the Division Bench Order dated 06.11.2015 in W.P.No.23518 of 2014 [between Union of India V. M.Jayalalitha] wherein at paragraph 3 it is observed as follows:

"3.Similar issue was already considered by this Court in W.P.No.24536 of 2013 by order dated 30.09.2013. Similar order was also passed in W.P.No.16041 of 2014 by order dated 20.06.2014 and against which Special Leave Petition was filed in S.L.P.No.18992 of 2014 and the Honourable Supreme Court has dismissed the said Special Leave Petition by order dated 08.12.2014. The Tribunal has considered all these aspects. As the matter is covered by the above said Judgment, we are unable to find any reason to interfere with the order passed by the Tribunal. Hence, the Writ Petition stands dismissed. The Petitioner are directed to implement the order made in O.A.No.651 of 2013 dated 10.07.2013 within three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed. "

21.The Learned Counsel for the Petitioner refers to the order in O.A.No.1106, 1430 & 1431 of 2010 dated 09.09.2011 [between B.Jayalakshmi V. Union of India and another] wherein at paragraphs 25 to 29, it is observed as under:

"25.We have carefully examined all the judgments relied on by the applicants. The same are not relating to the facts of this case. The judgment of the Hon'ble Supreme Court in SLP No.7773/09 in the case of Union of India and ors Vs. M.Nallavan is only applicable to the parties to the SLP. The respondents have given the vacancy position after adjusting 202 respondents and 37 interlocutory applicants of SLP.No.2976/08 (Civil Appeal No.7773/09) & 30 others.

26.Counsel for the applicants submits that since there are 32 vacancies in PA/SA, the first applicant in O.A.No.1106/2010 can be considered to that post. The applicant in O.A.No.1430/2010 can be considered in PM/MG since there are 33 vacancies and the applicant in O.A.No.1431/2010 can be considered for Group-D since 8 vacancies are available. The vacancies are circle wise and when the applicants have approached this Tribunal they can be considered for the vacancies as mentioned in para-12 of the reply statement to the rejoinder in O.A.No.1106/2010. Since the judgment of the Hon'ble Supreme Court in SLP No.7773/2009 is in-personum, that cannot be applied to the applicants as judgment in rem.

27.For the foregoing reasons, the applicants have failed to establish their case for grant of relief on the ground of question of law of limitation. The judgment in the case of Inder Pal Yadav and ors. Vs. Union of India and ors reported in 1985 (2) SCC 648 is not applicable to the facts of these cases.

28. The applicants did not approach this Tribunal well in time i.e. in 2001 and they have not filed an application for condonation of delay. Even the applicants have merit, on the grounds of delay and they are not entitled for relief as prayed for as held by the Hon'ble Supreme Court in the case of Bhoop Singh Vs. UOI and ors reported in AIR 1992 SC 1414 and C.Jacob Vs. The Director of Geology and Mining & another-2008(2) SCC (L&S) 961. Accordingly, the O.A.s are liable to be rejected.

29.The OAs are dismissed. No order as to costs."

22.The pith and substance of the stand of the Petitioner is that the benefits showered upon Subramani and Jayalakshmi are to be extended to the Petitioner.

23.The Learned Counsel for the Petitioner refers to the communication of the 2nd Respondent addressed to the Postmaster General, Southern Region, Madurai dated 24.12.2013 wherein at paragraph 3, it is mentioned as under:

"3.It may be ensured that the applicant acquire the minimum educational

qualification within the time-limit of 05 years prescribed in the DOPT's O.M. Dated 03.04.2012. Beyond which the services of the person, if still unqualified, are liable to be terminated."

and submits that requiring the Petitioner to acquire the minimum Educational qualification within five years period as per the aforesaid Official Memorandum dated 03.04.2012 etc. is an invalid and illegal one.

24.The Learned Counsel for the Petitioner points out the Appointment Order dated 12.06.2015, in respect of Mrs.S.Kalavathy [SC] W/o. Late L.Sugunesan, Sorter appointed as Multi Tasking Staff (Group C), of the General Manager (Postal Accounts & Finance), Tamil Nadu Circle, Chennai - 600 008 wherein at paragraph 7, it is observed as follows:

"7.The Pay and Allowances will be fixed notionally from the date of initial engagement as furnished above. The pay and pensionary benefits are to be protected as per the orders of the Hon'ble Supreme Court vide judgment dated 30.07.2010 in SLP.No.2976/ 2008(CA-7773/2009) she shall not be entitled for payment of any arrears on account of such regularization."

25.The Learned Counsel for the Petitioner refers to O.A.No.1006 of 2015 preferred by the present Writ Petitioner as an Applicant before the 5th Respondent/Tribunal against the Union of India, represented by the Secretary, Department of Posts, New Delhi and four others wherein the Tribunal on 28.03.2016 at paragraph 6 had observed the following:

"6.At the outset itself, we would like to fumigate our mind with the decision of the Hon'ble Apex Court in the case of Canara Bank & Anr. v. Mahesh Kumar & Ors dated 15.05.2005. Para 17 of the said judgment is extracted hereunder for ready reference:

"17.Considering the scope of the Scheme 'Dying in Harness Scheme 1993' then in force and the facts and circumstances of the case, the High Court rightly directed the appellant-bank to reconsider the claim of the respondent for compassionate appointment in accordance with law and as per the Scheme (1993) then in existence. We do not find any reason warranting interference."

As such taking into consideration the decision of the Hon'ble Apex Court and that too by applying. The maxim judicium

posteriora sunt in lege fortiora, the latest judgment would have the effect of binding precedent, we have to apply the aforesaid cited judgment. Accordingly, we hold that the respondent authority has to apply the then existed scheme relating to compassionate appointment so to say the scheme which existed as on 08.11.1991, i.e., the date of death of the applicant's father in harness and accordingly, the respondent department should reconsider the case of the applicant and process it accordingly and communicate the decision to the applicant." and disposed of the Original Application without costs.

26. At this stage, the Learned Counsel for the Petitioner informs this Court that the Secretary, Union of India, Department of Posts, New Delhi and four others as Petitioners filed W.P.No.42353 of 2016 being dissatisfied with the order of the Tribunal dated 28.03.2016 in O.A.No.1006 of 2015 and this Court at paragraph 14 had observed the following:

"14. While considering the issue, as to whether, the scheme for compassionate appointment, as it existed, as on the date of death of the 2nd Respondent's father in harness, would be applicable or the latter scheme would be applicable and taking note of Paragraph 17 of the decision in Canara Bank's case, which states that, "considering the scope of the scheme "Dying in Harness Scheme 1993" then in force and the facts and circumstances of the case, the High Court rightly directed the appellant Bank to reconsider the claim of the respondent for compassionate appointment in accordance with law and as per the Scheme (1993) then in existence.", the Central Administrative Tribunal, vide order dated 28.03.2016, made in O.A.No.1006 of 2015, has rightly held that the petitioners have to apply the then existed scheme, relating to compassionate appointment, so to say the scheme, which existed as on 08.11.1999, i.e., the date of death of the applicant's father in harness. Going to the material on record, we are of the view that there is no error in the order, warranting interference."

and dismissed the Writ Petition without costs.

27. Per contra, it is the submission of the Learned Counsel

for the Respondents 1 to 4 that one E.Natarajan, who worked as Group 'D' at Polur SO in Tiruvannamalai Division expired while in service on 08.11.1991 and further that, the Writ Petitioner, son of the deceased official was considered for Compassionate Appointment under Relaxation of Recruitment Rules as per 2nd Respondent's Memo dated 22.11.1993 and approved for Group 'D' cadre, based on his Educational Qualification on that date. In this connection, it is represented on behalf of the Respondents 1 to 4 that for want of 5% Direct Recruitment Vacancies earmarked for Compassionate Appointment, Regular Appointment could not be ordered at that time and kept in the waiting list for future absorption against 5% Direct Recruitment Vacancies. But the Petitioner was allowed to work in leave/short term vacancies in Group 'D' cadre in Tiruvannamalai Division purely on humanitarian grounds, as per order of the 2nd Respondent.

28.The Learned Counsel for the Respondents 1 to 4 brings it to the notice of this Court that as per Guidelines issued by the Department of Personnel and Training dated 24.11.2000, it is ordered to discontinue the maintenance of waiting list of approved candidates for Compassionate Appointment as per Postal Directorate's Letter dated 08.02.2001, with direction to such wait listed candidates to give their willingness for consideration and other ministries. Moreover, it is the stand of the Respondents that the Department of Personnel and Training through Memo dated 22.06.2001 had directed the Department that consideration of waiting list for appointment on Compassionate Grounds ought to be with reference to the position about availability of vacancies within the ceiling of 5% falling under Direct Recruitment in Group 'C' and Group 'D' posts and to discontinue the practice of circulating the names of deserving Applicant to other Ministries/Department.

29.At this stage, the Learned Counsel for the Respondents 1 to 4 contends that based on the aforesaid directions of Department of Personnel and Training, the Postal Directorate in Letter No.37-16/2001-SPBI dated 25.07.2001 decided to dispense with the procedure of keeping the waiting list of candidates for Compassionate Appointment and the willing candidates were offered GDS posts if they were eligible. Many candidates, who were dissatisfied with the orders issued by the Postal Directorate for discontinuing the waiting lists and for offering GDS Posts, preferred Original Applications and the Tribunal had allowed the said Applications and that the Department filed Writ Petitions before this Court which were dismissed by means of Common Order dated 20.06.2007.

30.The Learned Counsel for the Respondents 1 to 4 submits that the Department filed S.L.P.s before the Hon'ble Supreme Court of India and on 30.07.2010 in Civil Appeal No.7773 of 2009 and batches, the Hon'ble Supreme Court had directed the Respondent/ Department to regularise the services of 202

Respondents who were engaged in the Department in the short term/leave vacancies as on 27.10.2009 and 37 Interlocutory Applicants against the vacancies kept reserved for Compassionate Appointment from the year 2000-2001 to 2009 on humanitarian grounds etc. and further that, restricting upon the Judgment of the Hon'ble Apex Court, regularisation orders of the Respondents were issued by the Office of the 1st Respondent through Memo No.REP/47-3/2010 dated 30.08.2010 and REP/31-500/OA-53/11 dated 07.03.2011.

31.The Learned Counsel for the Respondents 1 to 4 strenuously projects a plea that since the Petitioner was not one of the Respondents in the Special Leave Petitions filed by the Department and that regularisation as ordered by the Hon'ble Supreme Court was permissible only to the Respondent concerned, the request of the Petitioner for regularising the services was not considered by the Department and hence, O.A.No.1453 of 2010 was filed by the Petitioner before the Tribunal and that the Tribunal through order dated 13.12.2012 directed the Respondents to place the Petitioner's name before the Circle Relaxation Committee Meeting to be held in immediate future and consider his case for appointment on Compassionate Ground as per Guidelines and Instructions of the DoPT under 5% Direct Recruitment Quota and till such time, to engage the Petitioner in short term leave vacancies.

32.The Learned Counsel for the Respondents 1 to 4 contends that the action of the Department in respect of Petitioner's case is as per the Orders of the Tribunal in the Original Application filed by him and therefore, the same is in order. Further, because of the reason that the Petitioner is not possessed with the minimum qualification of X Standard, his case was referred to the Office of the 1st Respondent for relaxation of educational qualification as per OM No.14014/02/2012-Estt(c) dated 16.01.2013, after obtaining approval from the Competent Authority, the Petitioner was appointed as 'Trainee' with a condition that he has to acquire the required qualification within five years and he was allotted to Madurai Division and that he joined at Madurai HO as Multi Tasking Staff on 30.01.2014 and presently working and he filed O.A.No.1006 of 2015 being dissatisfied with the condition being prescribed in regard to the acquisition of minimum qualification, nearly 2 ½ years of his appointment, the Petitioner has filed the instant Writ Petition claiming regularisation from the initial date, quoting other cases.

33.The Learned Counsel for the Respondents 1 to 4 submits that the Petitioner's case was placed before the Circle Relaxation Committee in 2013 and examined on merit along with other cases and that the nomenclature of Group 'D' was changed as MTS and as per new MTS Recruitment Rules, 2010, the minimum

qualification required for the post of MTS is X standard and since the Petitioner is possessed with the Educational Qualification of V standard, his case was referred to the Office of the 1st Respondent for relaxation of Educational Qualification as per OM dated 16.01.2013. At the risk of repetition, it is to be pointed out that only after obtaining approval of the Competent Authority, the Petitioner was appointed as 'Trainee' with a condition that he is acquired with the required qualification as per Recruitment Rules within 5 years and was allotted to the Madurai Division. Since the action of the Department is as per the direction of the Tribunal, the same is in order.

34. The Learned Counsel for the Respondents 1 to 4 comes out with a plea that the Hon'ble Supreme Court had observed that number of available jobs are limited and a Court of Law must take a realistic view of the matter and should exercise self restraint. Further, it is the contention of the Respondents 1 to 4 that the Petitioner who joined the post on 30.01.2014 with a condition and after 2 ½ years of appointment, has filed the instant Writ Petition, which is not maintainable.

35. The Learned Counsel for the Respondents 1 to 4 points out that the Petitioner's claim to regularise his services from the year 1993 cannot be accepted because of the reason that 5% Direct Recruitment Vacancy had not existed at that time and further, the Hon'ble Supreme Court in the decision Indian Drugs & Pharmaceuticals Limited V. Workmen, Indian Drugs & Pharmaceuticals Limited, (2007) 1 Supreme Court Cases 408 at special pages 431 & 432, at paragraphs 49 to 52, it is observed as follows:

"49. Before parting with this case, we would like to state that although this Court would be very happy if everybody in the country is given a suitable job, the fact remains that in the present state of our country's economy the number of jobs are limited. Hence, everybody cannot be given a job, despite our earnest desire.

50. It may be mentioned that jobs cannot be created by judicial orders, nor even by legislative or executive decisions. Jobs are created when the economy is rapidly expanding, which means when there is rapid industrialization. At present, the state of affairs in our country is that

although the economy has progressed a little in some directions, but the truth is that this has only benefited a handful of persons while the plight of the masses has worsened. Unemployment in our country is increasing, and has become massive and chronic. To give an example, for each post of a Peon which is advertised in some establishments there are over a thousand applicants, many of whom have MA, M.SC., M.Com or MBA degrees. Recently, about 140 posts of Primary School Teachers were advertised in a District in Western Madhya Pradesh, and there were about 13000 applicants i.e. almost 100 applicants for each post. Large scale suicides by farmers in several parts of the country also shows the level of unemployment. These are the social and economic realities of the country which cannot be ignored.

51. One may be very large hearted but then economic realities have also to be seen. Giving appointments means adding extra financial burden to the national exchequer. Money for paying salaries to such appointees does not fall from the sky, and it can only be realized by imposing additional taxes on the public or taking fresh loans, both of which will only lead to additional burden on the people.

52. No doubt, Article 41 provides for the right to work, but this has been deliberately kept by the founding fathers of our Constitution in the Directive Principles and hence made unenforceable in view of Article 37, because the Founding Fathers in their wisdom realised that while it was their wish that everyone should be given employment, but the ground realities of our country cannot be overlooked. In our opinion, Article 21 of the Constitution cannot be stretched so far as to mean that everyone must be given a job. The number of available jobs are limited, and hence Courts must take a realistic view of the matter and must exercise self-restraint."

36. It must be borne in mind that the principle of 'Regularisation' or 'Absorption' is not a matter of course and would depend upon facts of a given case and this can be effected by strict adherence to Rules and Regulations. Also that,

ordinarily, it cannot be 'De hors the Rules'.

37. Added further, since similarly placed Employees were regularised by the State and in some cases, such regularisation was effected, the stand taken in refusing regularisation on the basis that claimants had not satisfied the conditions for regularisation as laid down in the case of State of Karnataka V. Uma Devi, AIR 2006 SC 1806 was held to be not sustainable, as per decision of the Hon'ble Supreme Court in Malathi Das V. Suresh, (2014) 13 SCC 249.

38. It is to be remembered that Article 14 of the Constitution as a positive concept and no one can claim 'Equality' in an 'Illegality'. To put it succinctly, Article 14 of the Constitution enjoins 'Equality before Law', meaning that only persons who are in like circumstances ought to be treated equally.

39. Apart from that, the doctrine of 'Equality', which is a dynamic concept is also embodied in Articles 15-18 of Part III of the Constitution of India as well as in Articles 38, 39, 39-A, 41 and 46 of Part IV of the Constitution of India. After all, Article 14 of the Constitution of India guarantees a 'similar treatment' and not an identical treatment.

40. Indeed, 'Non-arbitrariness' is a necessary concomitant 'Rule of Law'. It is an axiomatic Fact in Law that there should be no discrimination between one individual and another if as regards the subject matter of their position is the same.

41. In this connection, it may not be out of place for this Court to make a pertinent mention that the State as an obligation to take necessary steps so that every person is given equal respect and concerned which he is entitled to as a human being, as per decision Ashutosh Gupta V. State of Rajasthan, AIR 2002 SC 1533.

42. It is to be pointed out that a Judgment not 'Inter parties' is admissible in evidence in certain circumstances and in certain cases, if the existence of such Judgment is a 'Relevant Fact' or 'Fact in Issue', as opined by this Court.

43. It is not in dispute that the Petitioner had served in the short term/leave vacancies in Group 'D' cadre in Tiruvannamalai Division from 10.05.1994 (i.e.) the date of initial engagement. He had prayed for regularisation of his service before the Tribunal since he was working for more than 17 years. Undoubtedly, the Writ Petitioner was eligible for appointment on Compassionate Ground under 5% quota coming under Direct Recruitment. Unfortunately, for want of vacancies he was

not considered for an appointment on Compassionate Ground. In O.A.No.1453 of 2010, the Petitioner before the Central Administrative Tribunal had assailed the Legality of the order dated 30.08.2010 passed by the 2nd Respondent. In reality, the said order dated 30.08.2010 of the 2nd Respondent pertains to the allotment of approved candidates for appointment in relaxation of normal Recruitment Rules. In the Annexure to the Memo dated 30.08.2010 of the 2nd Respondent, the name of K.Natarajan, Postman, Tiruvannamalai is seen and the date from which appointment was to be regularised was mentioned as 01.03.1997 and was allotted to the Tiruvannamalai Division. As a matter of fact, the said K.Natarajan was a party to S.L.P.No.2976/2008 (Civil Appeal No.7773 of 2009).

44.It appears that the Director of Posts through Letter No.24-1/99-SPB I dated 08.02.2001 had issued instructions to discontinue the maintenance of waiting list of approved candidates for Compassionate Appointment immediately, with a direction to such wait listing candidates for furnishing their willingness for consideration in other Ministries. Apart from that, the candidates for appointment on Compassionate Ground in other Ministries/ Department was to be discontinued as per O.M. dated 22.06.2001 of the DoPT based on the reason that the consideration of request on Compassionate Ground in the respective Department should be with reference to the position about the availability of vacancies within the ceiling of 5% of vacancies coming under the Direct Recruitment Quota. The Writ Petitioner had not availed the opportunity provided by the Department.

45.It transpires that the order in respect of regular absorption of 202 candidates on Compassionate Ground was issued by the 2nd Respondent in compliance of the Judgment dated 30.07.2010 in C.A.No.7773 of 2009 and etc. batch and that the Writ Petitioner is not a party to the S.L.P.No.2976/2008 (Civil Appeal No.7773 of 2009), the fact of the matter is other persons were regularised in terms of the Hon'ble Supreme Court's Judgment dated 30.07.2010 in C.A.No.7773 of 2009.

46.The Writ Petitioner's father died on 08.11.1991, at the age of 45. The Petitioner's appointment on Compassionate Ground was kept in the waiting list by the Circle Relaxation Committee. Since he had worked for more than 17 years, the Petitioner had prayed for regularisation of his services. He was eligible for an appointment on Compassionate Ground under 5% quota coming under Direct Recruitment as per DoPT and OM dated 24.11.2000. However, he was not considered for want of vacancies in this regard. Similarly placed persons, like that of the Writ Petitioner, viz., B.Jayalakshmi, D.Anusuya and D.Dakshinamoorthy, who preferred O.A.Nos.1106, 1430 and 1431 of

2010 obtained a Common Order of dismissal on 09.09.2011. Significantly, the Petitioner had not filed any Original Application before the Tribunal. The Respondents had issued a letter dated 30.05.2011 for discontinuation of the waiting list of GRD (NTC) candidates approved for Compassionate Appointment. The Petitioner through his representation dated 12.06.2001 expressed his willingness for consideration of his name in other Department/ Ministries, if posted in Tamil Nadu.

47. In the present case, the Petitioner was allotted by the 2nd Respondent through proceedings dated 24.12.2013 (he being approved) under Relaxation of Recruitment Rules as MTS and on the approval of Competent Authority vide Directorate's letter No.24-159/2013-SPB-I/C dated 11.12.2013 as 'Trainee' on Compassionate Grounds in the minimum of IS Pay band of Rs.4440-7440/- without any grade pay and he was assigned to Madurai Division. By virtue of the letter of the 2nd Respondent dated 24.12.2013, the Petitioner was directed to acquire the minimum educational qualification within the prescribed time limit of five years as per DoPT's O.M. dated 03.04.2012 and further that, he was informed that beyond the prescribed period, his services, if still unqualified, are liable to be terminated.

48. In fact, the Petitioner had joined at Madurai Head Office as Multi Tasking Staff on 30.01.2014. It cannot be brushed aside that consequent on the implementation of the 5th Pay Commission Recommendation, the nomenclature of Group 'D' was altered as 'Multi Tasking Staff' for which fresh MTS Recruitment Rules, 2010 was framed and the minimum qualification required for the post of MTS is X standard. However, the Petitioner's qualification is only V standard. When his case was referred to the office of the 1st Respondent for relaxation of the Educational Qualification as per OM dated 16.01.2013, after securing an approval of the Competent Authority, the Petitioner was appointed as Trainee with a condition that he is to acquire the prescribed qualification within five years.

49. At this juncture, this Court aptly points out the Office Memorandum dated 16.01.2013 on the subject 'Consolidated Instructions on Compassionate Appointment' [issued by the under Secretary to the Government of India] wherein under the caption 'Scheme for Compassionate Appointment' at Serial No.6.B.(b), it is mentioned as under:

"6.B. RELAXATIONS

(b) In exceptional circumstances Government may consider recruiting persons not immediately meeting the minimum educational standards. Government may engage them as trainees who will be given the regular pay bands and grade pay only on acquiring the

minimum qualification prescribed under the recruitment rules. The emoluments of these trainees, during the period of their training and before they are absorbed in the Government as employees, will be governed by the minimum of the - IS Pay band Rs.4440-7440 without any grade pay. In addition, they will be granted all applicable Allowance, like Dearness Allowances, House Rent Allowance and Transport Allowance at the admissible rates. The same shall be calculated on the minimum-IS Pay band without any grade pay. The period spent in the-IS pay band by the future recruits will not be counted as service for any purpose as their regular service will start only after they are placed in the pay band PB-1 of Rs.5200-20200 along with grade pay of Rs.1800. (Para 1 of O.M.No.14014/2/2009-Estt.(D) Dated the 11th December, 2009)
Note In the case of an attached/subordinate office, the Secretary in the concerned administrative Ministry/Department shall be the competent authority for this purpose."

50.Be that as it may, this Court, on a careful consideration of respective contentions, taking note of the attendant facts and circumstances of the instant case in an integral manner and considering the fact that the Petitioner stakes a claim for his right to Equal treatment in similar circumstances viz., that no discrimination be shown to him between persons, who are substantially in same condition/circumstances and also keeping in mind the Appointment Order dated 12.06.2015 issued by the Office of the General Manager (Postal Accounts & Finance), Tamil Nadu Circle, Chennai - 600 008 in respect of Mrs.S.Kalavathy (who was appointed as Multi Tasking Staff Group 'C'), whose pay and allowances was to be fixed notionally from the date of initial engagement and further that, pay and pensionary benefits are to be protected as per the orders of the Hon'ble Supreme Court vide Judgment dated 30.07.2010 in S.L.P.No.2976/2008 (CA.No.7773 of 2009) and the order dated 30.09.2013 in W.P.No.24535 of 2013 in Subramani's case, based on which the office of the 2nd Respondent had issued a Proceedings dated 28.03.2014 whereby the said Subramani was regularised from 15.12.1995 (from the Postman post initially he was engaged and allotted to Madurai Division) etc., this Court, at this stage, simpliciter, directs the Respondents 1 to 4 to consider the case of the Petitioner for regularisation from the date of approval i.e. on 23.11.1993, on Parity, in the teeth of

S.L.P.No.2976/2008 (CA.No. 7773/2009) (although was not a party to the proceedings), in exceptional circumstance, by relaxing the minimum Educational Standards [vide Official Memorandum dated 16.01.2013 of Government of India, Ministry of Personnel, Public Grievance and Pensions, (Department of Personnel & Training)], by taking into account of a primordial fact that the Petitioner had served the Department for more than 19 years and to fulfil his Legitimate Expectation of Permanent Job/Regularisation in the Department, in a fair, just, meaningful, practical, pragmatic, rational and unbiased manner and that too in a dispassionate manner, within a period of three months from the date of receipt of copy of order.

51.With the aforesaid observations and directions, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

Sgl

To

- 1.The Secretary,Union of India,
Department of Posts,Sansad Marg, Dak Bhavan,
New Delhi - 110 001.
- 2.The Chief Postmaster General,
Tamil Nadu Circle, Chennai - 600 002.
- 3.The Postmaster General,
Chennai City Region,Chennai - 600 002.
- 4.Superintendent of Post Offices,
Tiruvannamalai Division,
Tiruvannamalai-606 601.
- 5.The Registrar, Central Administrative Tribunal,
Chennai - 600 104.

+1cc to Mr.R.Malaichamy, Advocate SR.No.33736

+1cc to Mr.A.Veeramani, Advocate SR.No.35060

W.P.No.5074 of 2016

SJ(CO)
GMY(09/04/2019)