

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on : 14.02.2019
Order Pronounced on : 26.02.2019

CORAM

THE HONOURABLE Mr.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

W.P.No.29966 of 2017

S.Anthonisamy

... Petitioner

Vs.

1.Union of India,
Rep.by the Chief Postmaster General
Tamil Nadu Circle,
Chennai 600 002.

2.The Postmaster General,
Western Region,
Coimbatore 641 002.

3.Senior Superintendent of Post Offices,
Salem East Division,
Salem 636 001.

4.The Registrar,
Central Administrative Tribunal,
Chennai Bench, High Court Compound
Chennai 600 104.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for records relating to the impugned order passed by the Central Administrative Tribunal, Chennai Bench (4th respondent herein) in O.A.No.310/01076/2016 dated 18.07.2017 and to quash the same and consequently direct the respondents 1 to 3 to appoint the petitioner in MTS post from the date he was offered GDS BPM post with all monetary benefits.

For Petitioner : Mr.K.M.Ramesh

For R1 to R3 : Mr.V.Balasubramanian
Standing Counsel

For R4 : Tribunal

O R D E R

P.RAJAMANICKAM., J.

This petition has been filed to issue appropriate writ, order or direction more particularly a writ in the nature of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the Central Administrative Tribunal, Chennai Bench (4th respondent herein) in O.A.No.310/01076/2016 dated 18.07.2017 and to quash the same and consequently direct the respondents 1 to 3 to appoint the petitioner in MTS post from the date he was offered GDS BPM post with all monetary benefits and to pass such other order or direction as this Court may deem fit and proper in the circumstances of the case.

2. The petitioner herein had filed an application in O.A.No.1076 of 2016 on the file of the Central Administrative Tribunal(4th respondent herein) to set aside the order issued by the first respondent bearing No.REP/84-OA 558/2012 dated 11.12.2015 and for consequently direct the respondents 1 to 3 herein to appoint him in MTS post from the date, he was offered GDS BPM post with all monetary benefits. He also filed an application in MA.No.551/2017 to grant an interim order of status quo. The Tribunal/4th respondent had taken up both the applications viz., MA.No.551/2017 and O.A.No.1076/2016 and disposed of the same by the common order dated 18.07.2017 and thereby dismissed O.A.No.1076/2016 and also M.A.No.551/2017. Feeling aggrieved, the applicant has filed the present writ petition.

3. According to the petitioner, he was engaged as a Part Time Sweeper in Head Post Office, Attur, Salem on and from 05.05.1997. He had submitted various representations to the respondents 1 to 3 to absorb him as Group 'D' in the regular vacancy as he had been working as Part Time Sweeper for a long period. Since his representations did not bear any fruit, he filed O.A.No.119 of 2010 before the Tribunal/4th respondent to direct the respondents therein to absorb him either in the cadre of GDS or Group 'D' vacant post in Salem Division with all service benefits. The said OA was disposed of by the order dated 08.03.2012 directing the respondents to consider the case of the applicant for appointment for the post of Group 'D' / MTs in any vacancy that arises in the future. However, the respondents instead of complying with the order by appointing him as Group 'D' or MTS, rejected his claim by the order dated 23.04.2012 stating that the applicant was not engaged prior to 01.09.1993 for considering his case for absorption.

4. His further case is that he challenged the order passed by the respondents therein dated 23.04.2012 by filing O.A.No.558

of 2012 on the file of the Tribunal/4th respondent herein. The Tribunal by the order dated 05.08.2014 directed the respondents therein to verify vacancy position in the cadre of GDS or Group 'D' in the Salem Division and if there is vacancy, to absorb the applicant either in the cadre of GDS or Group 'D' in the Salem Division. After getting copy of the said order, the applicant submitted a representation dated 07.09.2014 requesting to comply with the order passed by the Tribunal. The respondents therein belatedly issued orders dated 14.07.2015 appointing the applicant as GDS BPM, Panaimadal BO a/w Yethapur SO. According to the applicant, the respondents 1 to 3 therein were specifically directed to verify the vacancy position in the cadre of GDS or Group 'D' and absorb the applicant in the vacant posts of GDS or Group 'D' but the said exercise had not been done, even though there were vacancies in Group 'D' posts. The respondents deliberately appointed the applicant as GDS BPM. The post of GDS is not a direct post in the Postal Department and the salary of GDS is far below the cadre of Group 'D'. After joining duty as GDS BPM, the applicant submitted a detailed representation to the first respondent dated 18.09.2015 but the first respondent vide order dated 11.12.2015 justified the action of offering GDS post stating that the order of the Tribunal has been complied with and the request of the applicant for appointing to him as Group 'D' cannot be considered. Aggrieved by the same, the applicant filed O.A.No.1076 of 2016 on the file of the Tribunal /4th respondent.

5. The respondents 1 to 3 contested the said application by filing reply statement. According to them, the petitioner himself had asked in O.A.No.558 of 2012 to issue a direction to the respondents to absorb him either in the cadre of GDS or Group 'D' and the Tribunal also passed an order dated 05.08.2014 directing the respondents to verify the vacancy position in the cadre of GDS or Group 'D' and there is any vacancy, the respondents have to absorb the applicant either in the cadre of GDS or Group 'D' and said exercise shall be completed within a period of two months from the date of receipt of copy of the said order. It is their further case is that in compliance of the said order, the petitioner was appointed as GDS BPM, Panaimadal BO a/w Yethapur S.O. with effect from 24.08.2015.

6. It is their further case that after joining the post of GDS BPM, the petitioner submitted one other representation dated 18.09.2015, requesting to absorb him in Group 'D' post referring to the Tribunal's order for which a reply was given vide letter No.REP/84-OA 558/2012 dated 11.12.2015 stating that he was appointed as GDS BPM as per the order of the Tribunal and he shall be considered for MTS post according to his turn in seniority in GDS cadre subject to availability of vacancies and other eligibility conditions. Aggrieved by the same, the petitioner has filed O.A.No.1076 of 2016.

7. It is their further case that as per the department of post (Multi Tasking Staff Group 'C' non-Gazette) Recruitment Rules, 2015, the Recruitment of cadre of MTS has to be made by following the said Rules and further the petitioner's application will be considered for MTS post according to his turn in seniority in GDS cadre subject to availability of vacancies and other eligibility vacant and therefore the claim of the petitioner does not merit acceptance and the same is liable to be rejected.

8. The petitioner, has also filed an application in M.A.No.551 of 2017 for an interim direction apprehending that he might be removed from the GDS post too as a retaliation against his efforts to seek justice from the Tribunal. It was alleged that the officials who went for inspection of his works were constantly threatening him. Accordingly, he filed the said MA seeking for an interim order restraining the respondents from ousting him from service.

9. The Tribunal/4th respondent, after considering the rival submissions, found that the respondents 1 to 3 appear to have complied with the directions of the Tribunal and appointed the applicant as GDS BPM. Further, considering the submission made by the respondents 1 to 3 that the petitioner would be considered for appointment as MTS in his turn, subject to fulfillment of eligibility conditions the Tribunal found that there is no case made out for interference by the applicant. Further it found that the apprehension of the applicant that he might be ousted from his present job is unfounded. Accordingly, it disposed of the aforesaid applications. Feeling aggrieved, the applicant has filed the present writ petition.

10. Heard, Mr.K.M.Ramesh, the learned counsel for the petitioner and Mr.V.Balasubramanian, the learned Standing Counsel for the respondents 1 to 3.

11. The learned counsel for the writ petitioner has submitted that the Tribunal/4th respondent failed to consider the various points raised by the petitioner in his Original Application most importantly about absorption of his juniors namely R. Bharathan and A. Krishnaveni as Group 'D' cadre who are similarly placed like him. He further submitted that the Tribunal ought not to have disposed of the Original Application when Miscellaneous Application was posted for hearing. He further submitted that no opportunity was given to the petitioner to put forth all the points raised in the Original Application. He further submitted that the counsel for the petitioner argued only for the interim application but the Tribunal without disposing of the same, disposed of the Original Application itself stating that there is no merit in the

Original Application as the earlier order has been complied with. He further submitted that the Tribunal ought to have held that the action of the official respondents in not appointing the petitioner as Group 'D' / MTS is illegal and unjust besides being in violation of the earlier order passed by the Tribunal.

12. He further submitted that the Tribunal ought to have seen that the official respondents did not verify the vacancy position in MTS while considering the claim of the petitioner for absorption. He further submitted that the Tribunal failed to appreciate and hold that the action of the official respondents in appointing the petitioner as GDS BPM when vacancies are existing in MTS post is deliberate and wanton to deny the petitioner the status of a Government Servant and the said action is nothing but vindictive in nature and therefore, he prayed to set aside the order passed by the Tribunal/4th respondent in OA.No.310/01076/2016 and consequently seeks to direct the respondents 1 to 3 to appoint the petitioner in MTS post from the date of GDS BPM post with all monetary benefits.

13. Per contra, the learned Standing Counsel for the respondents 1 to 3 submitted that in O.A.No.558 of 2012, the Tribunal had passed an order directing the respondents 1 to 3 to verify the vacancy position in the cadre of GDS or Group 'D' in the 5th respondent's division and if there is vacancy, the petitioner should be absorbed either in the cadre of GDS or Group 'D' and the said exercise shall be completed within a period of two months from the date of receipt of the said order. He further submitted that in compliance of the said direction, the petitioner has been appointed as GDS BPM, Panaimadal BO a/w Yethapur S.O. with effect from 24.08.2015. He further submitted that after joining the post of GDS BPM, the petitioner submitted a representation dated 18.09.2015 requesting to absorb him in Group 'D' post referring to the order passed in O.A.No.558 of 2012 and the same has been replied stating that the direction issued by the Tribunal has been complied with. He further submitted that as per the latest Rules to fill up the vacancies of MTS in DG's letter No.45-2/2011-SPB-I dated 27.01.2011, casual labourers engaged on or before 01.09.1993, working for full hours viz, 8 hours a day or part time casual labourers engaged on or before 01.09.1993 of the Recruiting Division or unit are eligible for appointment as MTS. He further submitted that since the petitioner was appointed as part-time contingent Sweeper with effect from 06.05.1997, he does not satisfy the conditions of the Recruitment Rules and hence, he was not appointed as Group 'D'.

14. He further submitted that recently the Department of Post had issued Multi Tasking Staff Group 'C' non-Gazette Recruitment Rules, 2015 prescribing certain norms with regard to filling up the Group 'C' non-Gazette post and if the petitioner

satisfied the said norms, he will be absorbed in the said cadre and therefore, considering the aforesaid facts, the Tribunal/4th respondent has rightly rejected the claim of the petitioner and in the said order this Court may not interfere and therefore, he prayed to dismiss the writ petition.

15. It is an admitted fact that the petitioner herein was originally appointed as Part Time Sweeper of Attur, Head Post Office, Main Building, Attur, Salem District, with effect from 06.05.1997 by the order dated 05.05.1997. The petitioner herein had filed O.A.No.119 of 2010 on the file of the fourth respondent herein to direct the respondents therein, to absorb him either in the cadre of GDS or Group 'D' vacancy position in the fifth respondent division. The said OA was disposed of on 08.03.2012 with the following directions:-

"5. In the facts of this OA, we are of the opinion that a similar direction can be issued to the respondents. Accordingly we direct the respondents to consider the case of the applicant for appointment for the post of Group 'D' / MTS in any vacancy that arises in the future. However, we also make it clear that this will be only as per the recruitment rules notified for the post of MTS and if necessary the applicant may be sent for training. When such vacancies arises the respondents should inform the applicant about the notification of recruitment enabling him to apply for the same."

16. In pursuance of the said order, the third respondent herein had sent a letter dated 23.04.2012 to the petitioner herein stating that his case has been considered but it is intimated that appointment of Group 'D' / MTS is not possible under the provision of MTS Recruitment Rules. Thereafter, the petitioner herein filed OA.No.558 of 2012 on the file of the Tribunal / fourth respondent herein to set aside the order passed by the third respondent herein dated 23.04.2012 and direct the respondents therein to absorb him either in the cadre of GDS or Group 'D' against clear vacant post in the fifth respondent division therein. In the aforesaid OA, the Tribunal / 4th respondent by the order dated 05.08.2014 had issued the following directions:

"9. Accordingly, the respondents are directed to verify the vacancy position in the cadre of GDS or Group 'D' in the 5th respondent division and if there is vacancy, the respondents are directed to absorb the applicant either in the cadre of GDS or Group 'D' in the fifth respondent division. This exercise shall be completed within a period of two months from the date of receipt of a copy of this order and communicate the same to the applicant."

17. Thereafter, the petitioner had submitted a representation to the Chief Postmaster General, Tamil Nadu Circle, Annasalai, Chennai 600 002, dated 07.09.2014 requesting to implement the order passed by the Tribunal in O.A.No.558 of 2012 dated 05.08.2014. Thereafter, the third respondent herein had issued an order dated 14.07.2015 appointing the petitioner in the post of GDS BPM, Branch Post Mater, with effect from 24.08.2015, Panaimadal BO a/w Yethapur S.O. After joining the post of GDS BPM, the petitioner had submitted a representation dated 18.09.2015 and 29.10.2015 requesting to absorb him in Group 'D' post referring to the Tribunal's order passed in O.A.No.558 of 2012 dated 11.12.2015. The Chief Postmaster General, Tamil Nadu Circle, Chennai 600 002 had communicated the order dated 11.12.2015 stating that the Tribunal passed an order in O.A.No.558 of 2012, to absorb the petitioner either in the cadre of GDS or Group 'D' and accordingly, the petitioner was absorbed as GDS in the vacant GDS BPM post and the order of the Tribunal has been duly complied with by the Department.

18. It was also intimated that as per the Scheme devised by the Chief Postmaster General, Tamil Nadu Circle for dovetailed list, no outsider can be appointed directly as Group 'D' (now MTS) and they would be absorbed to GDS cadre according to their seniority in the dovetailed list and then they will be considered for Group 'D' (now MTS) according to their turn in seniority in GDS cadre. Further, it was stated that the same has been highlighted in the Order of the Tribunal and it was also upheld by this Court in the order passed in W.P.No.5026 of 2003. Further, it was informed that the petitioner will be considered for MTS post according to his turn in seniority in GDS cadre subject to availability of vacancies and other eligibility conditions. The petitioner has challenged the said order in O.A.No.1076 of 2016 before the Tribunal. The Tribunal has disposed of the said O.A considering the assurance given by the respondents 1 to 3 that the petitioner will be considered for MTS post according to his turn in seniority in GDS cadre subject to availability of vacancies and other eligibility conditions.

19. In O.A.No.119 of 2010 itself, the Tribunal had passed an order directing the respondents therein to consider the case of the petitioner for appointment for the post of Group 'D' / MTS in any vacancy that may arise in the future. Further, it was ordered that the petitioner's representation should be considered as per the Recruitment Rules notified for the post of MTS. The respondents 1 to 3 by the order dated 23.04.2012 had intimated the petitioner that as per the latest orders of Recruitment Rules of Multi Tasking Staff contained in GDS letter No.45-2/2011-SPB-I dated 27.01.2011 only the casual labourer, who were engaged on or before 01.09.1993 are eligible for appointment of MTS whereas, the petitioner was appointed as

part-time contingent sweeper with effect from 06.05.1997 and hence, he does not satisfy the conditions prescribed in the Recruitment Rules. Challenging the said order, the petitioner had filed O.A.No.558 of 2012 and in the said Original Application, the petitioner himself asked to direct the respondents to absorb him either in the GDS cadre or in the Group 'D' cadre. Considering the rival submissions, the Tribunal had directed the respondents, to verify the vacancy position in the cadre of GDS or Group 'D' and to absorb him either in the cadre of GDS or Group 'D'.

20. In pursuance of the said order, the respondents 1 to 3 had absorbed the petitioner in the cadre of GDS and appointed him as GDS Branch Post Master, Panaimadal BO a/w Yethapur SO, by the order dated 14.07.2015. Therefore, now, it is not open to the petitioner to direct the respondents to appoint him only as Group 'D'. The petitioner's case was already considered by the Tribunal in O.A.No.558 of 2012 and issued a direction to the respondents therein to absorb the petitioner either in the cadre of GDS or Group 'D'. The petitioner has not challenged the said order. So, the order passed by the Tribunal in O.A.No.558 of 2012 has become final. Since the respondents were given option to absorb the petitioner either in the cadre of GDS or Group 'D', they have exercised the said option and absorbed the petitioner in the cadre of GDS. So, the petitioner, once again, cannot agitate the same issue before the Tribunal or before this court.

21. In the case of R.Bharathan filed in W.P.No.19823 of 2009 this Court by the order dated 18.07.2011 directed the respondents 1 to 3 therein to consider the case of the petitioner therein (R. Bharathan) as per the proceedings of the Assistant Directorate General dated 17.05.1989. Thereafter, when the matter came up for further consideration, the learned Standing Counsel for the respondents produced a copy of the proceedings issued by the Director (staff) in D.O.No.66-24/2011-SPB-I dated 21.04.2011 to the Chief Post Master General Tamil Nadu Circle informing that the Tamilnadu Circle may appoint the petitioner against a vacant erstwhile Group 'D' post, now designated as Multi Tasking Staff.

22. Recording the same, the said writ petition was disposed of. In this case as already pointed out that in O.A.No.558 of 2012, the petitioner himself has asked only to direct the respondents to absorb him either in the cadre of GDS or Group 'D'. The Tribunal also directed the respondents to absorb the petitioner either in the cadre of GDS or Group 'D'. Challenging the said order, the petitioner has not filed any writ petition. So, in pursuance of the direction issued by the Tribunal, the respondents therein had absorbed the petitioner in the cadre of GDS. Therefore, the aforesaid decision will not apply to the

facts of this case.

23. In the case of Krishnaveni, the Tribunal in O.A.No.610 of 2012 had directed the respondents therein to consider the case of the said Krishnaveni in any vacancy existing or which may arise in future in the MTS cadre. It is represented by the learned standing counsel for the respondents 1 to 3 that in pursuance of the said direction, the respondents therein called the said Krishnaveni, to produce the certificates to prove her educational qualification and at the time of scrutinization, it was found that those certificates are bogus certificates and hence, her claim was rejected.

24. In this case, as already stated that in O.A.No.558 of 2012, the petitioner himself has asked to issue a direction to absorb him either in GDS cadre or in the Group 'D' and the Tribunal also gave a direction to the respondents to absorb him either in GDS or Group 'D'. The respondents in compliance of the said order had issued the order to appoint the petitioner in the cadre of GDS. So, the aforesaid decision also will not help the petitioner.

25. In the reply statement filed by the respondents before the Tribunal, they have categorically stated that the petitioner will be absorbed as MTS according to his turn in seniority in GDS cadre subject to availability of vacancies and other eligibility conditions. Taking into consideration of all the aforesaid facts, the Tribunal has rightly held that there is no merit in the petitioner's claim. This Court, on independent assessment of the materials, is of the view that the said findings of the Tribunal does not require any interference.

26. Though the learned counsel for the petitioner has submitted that the application in M.A.No.551 of 2017 seeking interim direction alone came up for hearing before the Tribunal and the petitioner also argued only in that application, the Tribunal has disposed of the main OA itself without giving sufficient opportunity to the petitioner, a perusal of the order passed by the Tribunal would clearly show that the Tribunal gave sufficient opportunity to the petitioner to argue in main application also. Therefore, this Court is of the view that there is no merit in this writ petition and the same is liable to be dismissed.

27. In the result, the writ petition is dismissed. No costs.

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

1.The Chief Postmaster General
Tamil Nadu Circle,
Chennai 600 002.

2.The Postmaster General,
Western Region,
Coimbatore 641 002.

3.The Senior Superintendent of Post Offices,
Salem East Division,
Salem 636 001.

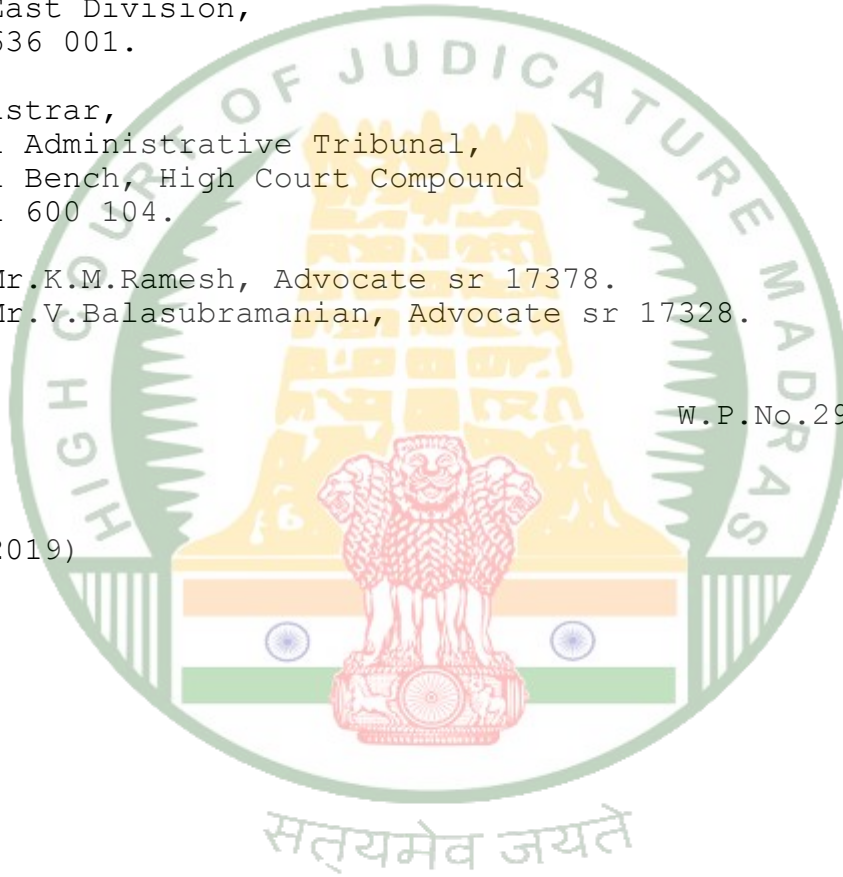
4.The Registrar,
Central Administrative Tribunal,
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Chennai 600 104.

+1 CC to Mr.K.M.Ramesh, Advocate sr 17378.

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SP(25/03/2019)



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