

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 09.12.2020

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.Nos.24882 & 24883 of 2003

The Superintendent of Post Offices,
Nagapattinam Division,
Nagapattinam - 611 001.

... Petitioner in both WPs.

Vs.

1.P.Panchanathan ... 1st Respondent in WP.No.24882 of 2003

1.K.Balakrishnan ... 1st Respondent in WP.No.24883 of 2003

2.The Presiding Officer
Central Government Industrial Tribunal,
Labour Court, Chennai.

... 2nd respondent in both WPs.

Prayer : Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Certiorari to call for the records on the file of the second respondent as regards I.D.Nos.543 and 542 of 2001 respectively and quash the said Award dated 10.04.2002 of the second respondent.

For Petitioner : Mr.T.L.Thirumalaisamy (in both WPs.)
Central Govt. Standing Counsel

For 1st Respondent : Mr.K.M.Ramesh (in both WPs)

For 2nd Respondent : Court

COMMON ORDER

Since the issue raised in both the writ petitions are one and the same, with the consent of the learned counsel appearing for both sides, these writ petitions were heard together and are disposed of by this common order.

2.The respondent employees in both the writ petitions had been engaged as Extra Departmental employee i.e., ED employee of the petitioner Postal Department sometime in 1991 and 1995 i.e., in respect of the petitioner in W.P.No.24883 of 2003 viz., K.Balakrishnan, he had been engaged first from 03.11.1995 and in

respect of P.Panchanathan, the employee/first respondent in W.P.No.24882 of 2003, he had been first engaged in the year 1991 as ED staff.

3.After working for a year or more continuously, the services of these employees were dispensed with or terminated.

4.When an issue, similar to that of, had come for consideration before the Central Administrative Tribunal, it seems that, a direction was given to the petitioner Postal Department to have a list prepared called dovetailed list in each of the Postal Circle/District, where, those who had been engaged temporarily as that of the contesting respondents herein prior to 11.02.1988 can be included in that list based on the seniority or based on their engagement and after 11.02.1988, no such employee can be included in the said list. However, those who had been engaged subsequent to the cut off date i.e., 11.02.1988 and had been engaged continuously or they worked continuously for 240 days in any two years from 11.02.1988 would also be included in the dovetailed list based on their seniority.

5.Based on the said directives issued by the Central Administrative Tribunal, it seems that, the petitioner Department prepared such list in each of the District and insofar as these contesting respondents are concerned, though they had been, according to them, engaged for more than 240 days in a given year or more i.e., within two years continuously, their names had not been included in the said dovetailed list, as has been directed by the Central Administrative Tribunal and therefore, in order to get such relief, these contesting respondents had raised industrial dispute before the Central Government Industrial Tribunal/Labour Court, Chennai in I.D.No.542 of 2001 in respect of K.Balakrishnan, the first respondent in W.P.No.24883 of 2003 and I.D.No.543 of 2001 in respect of P.Panchanathan, who is the first respondent in W.P.No.24882 of 2003.

6.The said two I.Ds. were tried by the Industrial Tribunal who ultimately, passed an award separately on the same day i.e., on 10.04.2002, where, the Industrial Tribunal allowed the claim of the workmen thereby, it was declared that, those workmen were entitled to have their names included in the dovetailed list maintained by the Nagapattinam Division of the Postal Department. Therefore, the Department i.e., the Superintendent of Post Offices, Nagapattinam Division was directed to include the name of the said employees in the said list of the Division under his control. Aggrieved over the said order / award passed by the Industrial Tribunal in I.D.Nos.542 and 543 of 2001 dated 10.04.2002, the Department i.e., Postal Department has filed these writ petitions.

7. Heard Mr.T.L.Thirumalaisamy, learned Central Government Standing Counsel appearing for the petitioner, who would submit that, pursuant to the Central Administrative Tribunal directive, a scheme was framed by the Postal Department on 23.12.1993. Under the said scheme, who were engaged as ED personnel by the Department on or before 11.02.1988, subsequent to their disengagement, had been included in such list prepared in each of the District. However, insofar as the employees, who had been engaged subsequent to the cut off date i.e., 11.02.1988, as per the directives given by the Central Administrative Tribunal, those names since have not been included as these contesting respondents had admittedly been engaged in the year 1991 and 1995 respectively i.e., very well after the cut off date i.e., 11.02.1988, their plea to include in the list prepared for the Nagapattinam Postal District / Circle cannot be considered or acceded, accordingly, they have not been included. However, the Industrial Tribunal in the impugned award directed the Department to include the names of these contesting respondents in the said dovetailed list on the footing that, they are entitled to have included in the list since they had completed 240 days of continuous service and the said reasoning given by the Industrial Tribunal is not inconsonance with the import of the scheme framed by the Postal Department. On that ground, assailing the impugned award passed by the Industrial Tribunal, these writ petitions have been filed, therefore, the impugned awards are liable to be set aside, the learned Standing Counsel appearing for the petitioner Department has contended.

8. However, Mr.K.M.Ramesh, learned counsel appearing for the respondents employees, by relying upon the scheme framed by the Chief Postmaster General, Tamil Nadu Circle dated 23.12.1993, would contend that, as per the scheme, it is not only the ED personnel, who had been engaged prior to 11.02.1988, but also, those, who had been engaged subsequent to the cut off date also, are entitled to include in the list for the purpose of utilising the same for future engagement as well as for confirmation, regularisation or absorption as and when the turn for such employees name based on their seniority comes, and this has been envisaged in the very scheme in detail. By stating the aforesaid, the learned counsel for the respondents workmen has pointed out that, in the scheme dated 23.12.1993, especially, under clause (g), those who had been engaged subsequent to 11.02.1988 and were allowed to continue for more than 240 days will also be included or they are entitled to be included in the dovetailed list based on their seniority. Therefore, by relying upon these import of the scheme, the learned counsel appearing for the respondents workmen would submit that, this action on the part of the respondents in not including the names of the contesting respondents in the list that is prepared for the

Postal Circle of Nagapattinam District was rightly pointed out and it was found in favour of the workmen based on the number of days they have continuously been engaged in the Postal Department and accordingly, the Industrial Tribunal, having accepted the plea raised by the employees in their I.Ds., had allowed their prayer through the impugned award, therefore, the same need not be interfered with by this Court, he contended.

9.I have considered the said rival submissions made by the learned counsel appearing for the parties and perused the materials placed before this Court.

10.The issue raised in both the writ petitions are in very narrow compass, where, based on the scheme framed by the Postal Department dated 23.12.1993 whether these two contesting respondents/employees are entitled to be included in the dovetailed list prepared for the particular Postal Circle or District i.e., Nagapattinam, or not.

11.In order to answer this question, we can straight away refer to the salient features of the scheme framed by the Postal Department dated 23.12.1993, where, among other things, the following are relevant.

"(a) ED Outsiders whose services have been engaged before 11.2.1988 only will be eligible for inclusion in the dovetailed list. They should have completed 240 days of service in any two years prior to 11.2.1988 or after 11.2.88. Candidates initially engaged in service after 11.2.88 are not eligible for regularisation even if they have completed 240 days of service in any two years after their engagement.

(b) The maximum age limit as prescribed in the existing rules for appointment to ED posts will not apply to such ED outsiders.

(c) For appointment to the posts of ED BPM, the minimum educational qualification viz., Matriculation as prescribed in Directorate's letter No.17-366/91 ED & ED & Trg. dt.12.3.93 will not apply to the ED Outsiders and provisional appointees who are included in the dovetailed list.

(d) Separate seniority list will be prepared division wise which will include casual labourers coming within the purview of this office letter No.REP/83-1/84 dt. 4.2.1988, and ED Outsiders engaged before 11.2.1988. Both the seniority lists will then be dovetailed and a common seniority list will be prepared on the basis of the date of the first appointment i.e., a person who was appointed first will rank senior.

(e) All existing as well as future ED vacancies

shall be filled only by taking candidates from the dovetailed list in the order of seniority, till such time the list is completely exhausted. In other words there should be no recruitment from the open market through Employment Exchange till the dovetailed list is exhausted.

(f) The existing employment of candidates included in the dovetailed list shall be protected. In other words such candidate's may continue to be engaged in leave vacancies, short term vacancies etc., till their turn for regularisation comes. This is, however, subject to the condition that the candidates who come in for adverse notice for criminal misconduct or lack of integrity shall be liable to have their names deleted from the dovetailed list.

(g) Provisional appointees for ED posts who are appointed after 11.2.1988 and allowed to continue for more than 240 days will also be included in the dovetailed list, based on their seniority, if they had put in not less than three years of service as per DG (Posts) letter No.43-4/77-PEN dt. 18.5.1979. This provisional appointees who have completed 240 days in any two years after 11.2.88 will also be included in the dovetailed list, based on their seniority."

12.From (a) to (g) of the conditions imposed in the scheme, it speaks about how such an inclusion can be made and what is the sanctity of the cut off date i.e., 11.02.1988 and how this i.e., who had been engaged as ED personnel prior to 11.02.1988 can be dealt with and how this i.e., who had been engaged subsequent to the cut off date can also be dealt with. These aspects have been clearly demarcated and explained in the said scheme, especially between clauses (a) to (g), as has been quoted herein above.

13.In this context, for the purpose of the issue raised in these writ petitions, in view of the factual matrix that, admittedly these respondents had been engaged only subsequent to 11.02.1988 i.e., after the cut of date, we can straight away refer to clause (g) of the scheme which has already been quoted.

14.Under clause (g), the provisional appointees for ED posts, who are appointed after 11.02.1988 and allowed to continue for more than 240 days, will also be included in the dovetailed list, based on their seniority, if they had put in not less than three years of service as per DG (Posts) letter dated 18.05.1979. This provisional appointees, who have completed 240 days in any two years after 11.02.1988, will also be included in the dovetailed list, based on their seniority.

15. Therefore, it has become clear that, under two categories, those who had been engaged even after 11.02.1988 can be included in the said list.

16. One is that as per the DG (Posts) letter dated 18.05.1979, those who had been working for not less than three years of service can also be included in the list and in the other way, those provisional appointees, who have completed 240 days in any two years after 11.02.1988, will also be included in the dovetailed list, based on their seniority.

17. With these import of the scheme, let us see, whether atleast the second criteria fixed under clause (g) of the scheme has been fulfilled by these two contesting respondents.

18. In order to ascertain the same, the learned counsel appearing for the respondents has pointed out that, this has been factually found in favour of the employees, where, he relied upon the following findings given by the Industrial Tribunal in the impugned order.

"5. It is the averment of the Petitioner in his Claim Statement that the Assistant Superintendent of Post Offices, Tiruvarur Sub Division called for applications for selection to fill that post and that the Petitioner also has submitted the application along with necessary testimonials and in view of the suitability and eligibility of the Petitioner, the Petitioner was selected and appointed as Extra Departmental Branch Post Master at Thazhakudi B.O. on provisional basis w.e.f. 1.2.96 and he was continuously working in that capacity without any break till 18.2.97. In support of this contention, the xerox copy of the order of provisional appointment dated 1.2.96 has been filed as Ex.W1. It is the further contention of the Petitioner that the Assistant Superintendent of Post Offices, Tiruvarur Sub Division terminated the services of the Petitioner on 18.2.97 without issue of notice and notice pay and the order of termination passed without complying the provisions of Section 25F of Industrial Disputes Act, 1947 is illegal, arbitrary and in violation of principles of natural justice and also the unfair labour practice exercised by the Respondent."

19. Insofar as the other respondent also, the learned counsel appearing for the respondents relied upon the following factual finding given by the Industrial Tribunal in the impugned order.

"7. The Petitioner was working as Extra Departmental Mail Carrier at Manakkal Ayyampet Sub Office from

3.11.95 to 24.3.97 continuously is not disputed."

20.By relying upon these factual findings, which are undisputed, the learned counsel has contended that, both these respondents employees had completed 240 days continuous engagement in a given year or within two years, therefore, in that context, they fulfilled the second criteria of clause (g) of the scheme, therefore, they are very much entitled to be included in the dovetailed list.

21.The said factual finding given by the Industrial Tribunal through the impugned order is undisputed and therefore, this Court feel that, based on such factual finding only the Labour Court has given the verdict by giving direction to the petitioner Postal Department, who are the respondent before the Industrial Tribunal that, the employees are entitled to be included in the dovetailed list.

22.In this context, it is also to be noted that, the issue along with some more connected issues came up for consideration before a Division Bench of this Court in a batch of writ petitions in the matter of Union of India, rep. by the Superintendent of Post Offices (West), West Division, Sooramangalam, Salem District Vs. A.Suguna, where, among other things, the stand of the Postal Department has been explicitly made and the same also had been taken note of by the Division Bench of this Court. In order to have an easy reference of the stand of the Postal Department, which was recorded by the Division Bench judgment, referred to above, the following has been extracted.

"17. (iv) In respect of provisional appointees who are appointed after 11-2-1988 and allowed to continue for 240 days in any two years as per judgment in OA.No.811 of 1988, they will also be brought in the dovetailed list and they will be considered for absorption as and when their turn comes up. The seniority of these candidates will be regulated as per the direction in OA.No.811 of 1988."

23.It is brought to the notice of this Court by the learned counsel appearing for the respondents employees that, this judgment of the Division Bench, cited supra, has also been confirmed subsequently by the Hon'ble Supreme Court of India in the SLP filed by the Department.

24.Therefore, these factors have become final and the issue also had already been given a quietus, where, if an employee had completed 240 days continuous service within a given two years period, even though he had been engaged subsequent to the cut off date i.e., 11.02.1988, he will be entitled to get included

in the dovetailed list to be prepared in each District of the Postal Department and once the name gets included, such person, who has been included, would be entitled to seek for absorption or future engagement based on the seniority in the list being maintained.

25. These factors cannot be controverted at this length of time by the Department. Therefore, this Court feel that, the present challenge made in these writ petitions against the impugned award passed by the Industrial Tribunal, giving direction to the Postal Department to include the contesting respondents in the concerned dovetailed list, cannot be sustained and therefore, the said challenge fails.

26. In view of the above, the writ petitions are deserved to be rejected, accordingly, the same are dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

Sgl

To

The Presiding Officer
Central Government Industrial Tribunal,
Labour Court, Chennai.

+2ccs to Mr.K.M.Ramesh, Advocate SR.No. 39980

+1cc to Mr.T.L.Thirumalaisamy , Advocate SR.No. 39742

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A.SK(23.03.2021)

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