

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2020

CORAM

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.P.No.26257 of 2019

1.Union of India
Rep. by its Director (Staff),
Ministry of Communication & IT,
Department of Posts,
Dak Bhavan,
Parliament Street,
New Delhi - 110 001.

2.The Chief Postmaster General,
Anna Salai,
Chennai - 600 002.

3.The Senior Superintendent,
Railway Mail Service (RMS),
'MA' Division,
Madurai - 625 001.

4.Head Record Officer,
RMS 'MA' Division,
Madurai - 625 001.

...Petitioners

Vs

1.K.Pandiselvam

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

...Respondents

Prayer : Writ Petition filed under 226 of the Constitution of India to issue a writ of certiorari calling for the records, relating to the order passed by the second respondent Tribunal in O.A.No.819 of 2015, dated 19.07.2018, quash the same.

For Petitioners : Mr.Venkataswamy Babu

For Respondents : Mr.R.Malaichamy for R1
R2 - Tribunal

ORDER

(Order of the Court was made by M.M.SUNDRESH,J)

Seeking a direction to call for the records relating to the order passed by the second respondent Tribunal in O.A.No.819 of 2015, dated 19.07.2018 and to quash the same, the present writ petition has been filed.

2. The first respondent's father, who was working in the Postal Department, died on 30.11.1998. The first respondent made an application for compassionate appointment which was rejected on 19.06.2012. The rejection order was challenged before the Tribunal by filing O.A.No.963 of 2012. The Tribunal disposed of the application by directing the petitioners herein to consider the case of the first respondent for the vacancies of subsequent years. Thereafter, the second petitioner, by order dated 28.8.2014, rejected the claim of the first respondent for compassionate appointment. Aggrieved over the same, the first respondent filed another application in O.A.No.819 of 2015. The Tribunal though did not agree with the contention of the first respondent on merits, nonetheless directed the petitioners to give priority for re-engagement of the first respondent whenever vacancy arises. Challenging the same, the present writ petition has been filed.

3. The learned counsel appearing for the petitioners submits that the first respondent was dis-engaged in view of the policy decision made. The dis-engagement took place in the year 2015. The Tribunal passed the order in the year 2018 contrary to the policy decision to re-engage the first respondent which is not permissible in law. Such a prayer has not been sought for in the application filed before the Tribunal. There is no necessity to re-engage the first respondent. Therefore, no such direction can be issued in law as per the Service Regulations of the petitioners and, therefore, the order passed by the Tribunal requires interference.

4. The learned counsel appearing for the first respondent submitted that the first respondent had been engaged over the

years till 2015 as GDS (Substitute) and the Tribunal having considered the relevant material has issued the direction contained in the impugned order and the same warrants no interference. The learned counsel further submitted that it is not correct to state that no re-engagement takes place, inasmuch as persons are being engaged as GDS(Substitute) even as on date. In support of the said submission, reliance has been made by the learned counsel for the first respondent upon the Office Memorandum issued by the Government of India, Ministry of Personal, PG and Pensions, Department of Personnel & Training, dated 04.09.2019.

5. We do find some force in the submission made by the learned counsel appearing for the first respondent. The Tribunal passed the award on sympathy. The Tribunal, which is a creature of statute, cannot issue a direction contrary to law, solely based on sympathetic considerations. We may note that the relief sought by the first respondent has been declined. The Tribunal cannot direct the petitioners to re-engage the first respondent when it is against the policy and there is no need to undertake the said exercise. It appears that the Service Regulations also do not permit the same. The reliance made on the letter, cited supra, may not have any application to the case on hand. This is a general communication sent to all the Departments. When the petitioners take a specific plea that they are not engaging anybody on casual employment, no Court can issue direction to do so. There are no material to show that the petitioners have appointed or they are in the process of appointing similar persons as GDS Substitute. We may also note that the first respondent has not been engaged from the year 2015 onwards.

6. In such view of the matter, we are constrained to hold that the order of the Tribunal cannot be sustained in the eye of law and the same is set aside.

7. For the foregoing reasons, the Writ Petition stands allowed. However, we make it clear that as and when such a policy decision is taken permitting the engagement of GDS (Substitute), the case of the first respondent may be considered, subject to the Service Regulations governing them. No Costs. Consequently, connected W.M.P.No.25640 of 2019 is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssm

To

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

+1cc to Mr.R.Malaichamy, Advocate,S.R.No.18505/03-03-2020

+1cc to Mr.Venkataswamy Babu, Advocate,S.R.No.18979/04-03-2020

W.P.No.26257 of 2019

MR (CO)
RN (27/05/2020)



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