

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.02.2021

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

WP.No.22578 of 2019
and W.M.P.Nos.22013 & 14796 of 2020

V.Simeon

...

Petitioner

Versus

- 1.The Union of India rep.by its
Secretary to Government,
Ministry of Communication,
Department of Post, Dak Bhavan,
Sandad Marg, New Delhi 110 001.
- 2.The Chief Post Master General
Tamil Nadu Circle,
Anna Salai, Chennai.
- 3.The Senior Superintendent of Post Offices,
Kanyakumari Division,
Nagercoil 629 001.
- 4.The Assistant Senior Superintendent of Post Offices,
Thucklay Sub Division,
Thucklay, Kanyakumari 629 001.
- 5.The Central Administrative Tribunal,
rep.by its Registrar,
Chennai Bench,
High Court Building,
City Civil Court complex,
Chennai.

...

Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus Calling for the records of the 5th respondent viz. the Central Administrative Tribunal, Chennai Bench in OA 776/2019 dated 23.07.2019, confirming the order of the 2nd respondent pertaining to its notification No.STC/ 12-GDS ONLINE/ 2019 dated 10.03.2019, in so far as it notifies to fill

up the posts of GDS ABMP/ Dak Sevak in the Mulagumoodu Sub Office (Presently Occupied by the petitioner) and quash the same and consequently direct the respondents to absorb the petitioner as ED Packer / GDS ABMP Post at Mulagumoodu Sub Office under the Physically Handicapped quota in view of the 13 long years of service rendered by the petitioner and pass such other order.

For Petitioner : Mr.V.Vijay Shankar

For RR1 to 4 : Mr.d.Rajesh Vivekananthan

ORDER

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

The petitioner / Original Applicant in O.A.No.776 of 2019 before the Central Administrative Tribunal, Madras Bench, is the petitioner. The petitioner, in the affidavit filed in support of this Writ Petition, would aver among other things that the petitioner was working as a GDS employee in different capacities in Attur and Mulagumoodu sub offices between September 2006 till July 2019. The petitioner is physically challenged person, suffering from 50% disability.

2. A notification came to be issued for the post of Gramin Dak Sevaks Cycle-II/2019 in Tamil Nadu Circle and the petitioner has submitted an GDS online engagement application. The petitioner, on an earlier occasion, made a challenge to the said notification by filing O.A.No.562 of 2019, on the file of the Central Administrative Tribunal, Madras Bench and vide final order dated 25.04.2019, the Original Application came to be dismissed by recording a finding that in the absence of any provision for absorbing applicant and he was not regularised as he cannot be absorbed under 4% quota for Physically Handicapped persons in the GDS category. The petitioner made a challenge to the said order by filing W.P.No.11532 of 2019 and it came to be dismissed as withdrawn on 08.05.2019.

3. The petitioner subsequently filed O.A.No.776 of 2019, making a challenge to the very same impugned notification dated 10.03.2019, primarily on the ground that in the light of long years of service rendered by the petitioner, coupled with the fact of physically challenged person, the respondents are bound to regularise his service under GDS post under physically handicapped quota. The said impugned order was entertained and the contesting official respondents had filed their detailed counter affidavit and the Tribunal has taken into consideration the material and taking note of the counter affidavit filed by

the official respondents that the writ petitioner / original applicant was engaged as stop-gap arrangement not exceeding 89 days and purely on temporary basis and that stoppage of regular engagement for vacant GDS posts have already been done and further that the selection cannot be made without undertaking the selection process, found that there is no merit in the Original Application and accordingly dismissed the same vide impugned order dated 23.07.2019 and making a challenge to the same, the present Writ Petition is filed.

4. Mr.V.Vijay Shankar, learned counsel appearing for the petitioner would submit that the petitioner, being a physically challenged, had rendered sincere and unblemished service for nearly 30 years and odd and it is always open to the respondents to consider his claim for absorption under 4% quota reserved for physically challenged and the Tribunal, after taking note of the facts and surrounding circumstances had erroneously reached the conclusion to reject the Original Application and prays for interference.

5. The learned counsel appearing for the petitioner by way of alternative submission would submit that since selection process may take some time and the petitioner's services were engaged for nearly 30 years and got disengaged during July 2020, till such time, the recruitment has been completed and the appointment is made, his services may be utilised as stop-gap arrangement, so as to enable him to survive in the most difficult situation, on account of the on-set and outbreak of COVID-19 pandemic virus.

6. Per contra, learned counsel appearing for the respondents 1 to 4 has drawn the attention of this Court to the counter affidavit of the 3rd respondent and would submit that in the light of the well settled legal position, there cannot be any positive order of regularization, especially in the absence of rules and in the light of the dismissal of O.A.No.562/2019 as well as withdrawal of W.P.No.11532 of 2019, the case projected by the petitioner absolutely lacks merits and prays for dismissal of the same.

7. This Court paid it's anxious consideration and best attention to the rival submissions.

8. There is a provision of 4% reservation, in and by which, six posts have been allotted to physically challenged persons. The endeavor of the petitioner appears to be that he want to get his services regularised under the said quota. It is to be noted at this juncture that as per the impugned notification dated 10.03.2019, apart from the reservation for physically challenged, there is a selection process also.

9. It is a well settled position of law that this Court in exercise of its jurisdiction under Article 226 of the Constitution of India, cannot issue a positive direction for regularization of services of a temporary employee, unless the concerned person able to point out that in respect of persons who are similarly placed, their services have been regularised. Unfortunately in the case on hand, no such materials has been placed before this Court. Of course, it is open to the respondents to exhibit such a benevolence, but this Court cannot pass any positive orders in this regard.

10. A perusal of the earlier order dated 25.04.2019, passed in O.A.No.562 of 2019, by the Tribunal would disclose that tenable reasons have been assigned for rejection of the petitioner's claim and the petitioner in O.A.NO.766 of 2019, also sought to make a similar claim. Though the petitioner made challenge to the order dated 25.04.2019, made in O.A.No.562 of 2019, passed by the Tribunal, by filing W.P.No.11532 of 2019, it came to be dismissed as withdrawn on 08.05.2019.

11. In the light of the above facts and circumstances, coupled with the reasons assigned above, this Court is of the considered view that there is no merit in this Writ Petition. However taking into consideration of the fact that the petitioner is having a physical disability of 50% and in that capacity had rendered 30 years of service, it is open to him to submit a representation for his temporary accommodation as GDS employee till the completion of the recruitment process, to the 3rd respondent within a period of four weeks from the date of receipt of a copy of this order / uploading of the order in the website and upon receipt of the same, the 3rd respondent is directed to consider the same in an objective manner and pass appropriate orders as expeditiously as possible within a further period of four weeks thereafter and communicate the decision taken to the petitioner.

12. In the result, the Writ Petition is dismissed with the above observation. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

sk
To

- 1.The Secretary to Government,
The Union of India,
Ministry of Communication,
Department of Post, Dak Bhavan,
Sandad Marg, New Delhi 110 001.
 - 2.The Chief Post Master General
Tamil Nadu Circle,
Anna Salai, Chennai.
 - 3.The Senior Superintendent of Post Offices,
Kanyakumari Division,
Nagercoil 629 001.
 - 4.The Assistant Senior Superintendent of Post Offices,
Thucklay Sub Division,
Thucklay, Kanyakumari 629 001.
 - 5.The Registrar,
The Central Administrative Tribunal,
Chennai Bench,
High Court Building,
City Civil Court complex,
Chennai.
- +1cc to Mr.R.Rajesh Vivekananthan, Advocate Sr.5766

WP.No.22578 of 2019

ssd[col]
srg 03/03/2021

सत्यमेव जयते

WEB COPY