

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 5667 OF 2006

1. Union of India, through Secretary,
Ministry of Communications cum Director General (Posts),
New Delhi, Government of India, New Delhi.
2. Sr. Superintendent of Post Offices (SSP),
Nagpur City Division, Giripeth, Nagpur.
3. Assistant Superintendent of Post Offices, (ASP),
Town Sub Office (TSO) No.2, Nagpur City Division,
Nagpur.
4. The Director General, Nagpur Region,
Nagpur.
5. The Postmaster General,
Nagpur.
6. The Sub Postmaster,
Ayodhya Nagar Post Office, Nagpur – 24.

PETITIONERS

.....VERSUS.....

Siddarth Suryabhan Dhete,
C/o. Pramod Lanjewar, Mahatma Gandhi Nagar,
aged 35 years, Hudkeshwar Road,
Nagpur – 440024.

RESPONDENT

Shri C.J. Dhumane, Advocate for the petitioners.
Shri G.P. Belsare, Advocate for the respondent.

CORAM : A. S. CHANDURKAR AND URMILA JOSHI - PHALKE, JJ.

DATE : 01st JULY, 2022.

ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.)

The challenge raised in this Writ Petition is to the order passed by the Central Administrative Tribunal in the Original Application preferred by the respondent herein. By the judgment dated 28/4/2006, the Tribunal was pleased to set aside the orders dated 9/12/2003 and

10/12/2003 terminating the services of the respondent and directing his reinstatement without any back wages.

2. The respondent was appointed as Extra Department Agent – EDA on a temporary basis until further orders by the communication dated 17/2/1996. In that communication, it was stated that since one Shri G.F. Akode, EDA was under put off duty, the petitioner was permitted to discharge duties of that post on temporary basis. Pursuant thereto, the petitioner discharged duties till 9/12/2003 when he was not permitted to resume his duties since the incumbent had reported back. It is the further case of the respondent that in the subsequent recruitment process, respondent No.7 before the Tribunal came to be selected as EDA and hence, being aggrieved by the orders dated 9/12/2003 and 10/12/2003 as well as the appointment of respondent No.7, the respondent challenged the same. The Tribunal after considering the material on record held that the respondent had worked for more than seven years and hence, he could not have been removed on the basis of oral orders. Since such removal was arbitrary, it was directed that the respondent should be reinstated in service with continuity but without any back wages. Being aggrieved, the Union of India has challenged the order passed by the Tribunal.

3. Shri C.J. Dhumane, learned Counsel for the petitioners submitted that the appointment of the respondent was of a stopgap nature and purely of a temporary nature. The order states that the respondent was to work as EDA for a temporary period until further orders. Since the respondent did not participate in the subsequent selection process, he was not entitled to be reinstated and thereafter regularized in service. The Tribunal misconstrued the Gramin Dak Sevak – GDS Rules that were applicable and directed the respondent's reinstatement. It was further submitted that respondent No.7 before the Tribunal was more meritorious and he had been selected after following due process. Since, the respondent had no right to the post in question, he was not liable to be reinstated in service. The learned Counsel referred to the decision in *(2016) 1 SCC 454 (Madras Institute Of Development Studies And Another Vs. K. Sivasubramaniyan And Others decided on 20/8/2015)* and submitted that the order passed by the Tribunal was liable to be set aside.

4. Shri G.P. Belsare, learned Counsel for the respondent supported the order passed by the Tribunal. According to him, even if the initial appointment of the respondent was provisional in nature, he had worked for about seven years and his services were put to an end without any notice. The petitioners were liable to comply with the principles of

natural justice. Without doing so, the services of the respondent had been put to an end. He further submitted that the Tribunal rightly considered the fact that the respondent had discharged duties for almost seven years and had gained necessary experience. He submitted that the Tribunal rightly relied upon the decisions cited before it. In these facts, therefore, the direction to reinstate the respondent with continuity did not call for any interference. He thus submitted that the Writ Petition was liable to be dismissed.

5. We have heard the learned Counsel for the parties and we have gone through the documents placed on record. It is an admitted fact that the respondent's entry with the Postal Department was pursuant to the order of appointment dated 17/2/1996. That order states that the respondent was appointed purely on temporary basis until further orders since the incumbent was on put off duty. Under Rule 17 of the Recruitment Rules, a provisional appointment can be made by issuing an order as stated in Annexure – A. The order issued to the respondent on 17/2/1996 is not in that format. It has been further stipulated in Rule 17 that such appointments are only on temporary basis and without any right to claim regular appointment. We find that in the light of Rule 17 of the Recruitment Rules, no right accrued in the respondent to claim entitlement to the post of EDA/ GDS. The Tribunal in the impugned order

has merely observed that since the respondent put in more than seven years service, he was entitled to relief of reinstatement. The fact that the appointment of the respondent was on temporary basis as a stopgap arrangement until further orders is sufficient to indicate that there was no right in him to claim that his services be regularized. It is an undisputed fact that the Recruitment Rules prescribe the mode of recruitment of EDA which the respondent did not undertake.

6. As regards the contention that there was absence of any show cause notice, we find that the services of the respondent have been put to an end in terms of the order of appointment. The same is in consonance with Rule 17 of the Recruitment Rules. Mere continuation on provisional basis without undergoing the process of recruitment would not confer any right on such appointee to claim regularization. The Tribunal lost sight of this aspect while granting relief to the respondent. It is also undisputed that by undertaking the regular recruitment process, respondent No.7 before the Tribunal was appointed. We therefore find that the Tribunal was not justified in directing reinstatement of the respondent. It misconstrued the decisions cited before it by ignoring the factual aspects.

7. For the aforesaid reasons, the judgment of the Tribunal dated 28/4/2006 in the Original Application preferred by the respondent is set

aside. The Original Application preferred by the respondent is dismissed. The Writ Petition is accordingly allowed. Rule is made absolute in aforesaid terms with no order as to costs.

(URMILA JOSHI - PHALKE, J.)

(A.S. CHANDURKAR, J.)

Sumit