



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2022

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.NO.23088 OF 2018
&
W.M.P.NO.26977 OF 2018

1. The Union of India,
Rep. By the Chief Postmaster General,
Tamil Nadu Circle,
Anna Salai,
Chennai - 600 002.
2. The Senior Superintendent,
Railway Mail Service (RMS),
Air Mail Sorting Division,
Chennai - 600 016.

... Petitioners

.Vs.

1. G.Raghu
2. The Registrar,
Central Administrative Tribunal,
Chennai Bench, High Court,
Madras - 104.

... Respondents

PRAYER:-

Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorari to call for the records dated 18.11.2016 and made in O.A.No.1259 of 2013 on the file of Central Administrative Tribunal, Chennai Bench and quash the same insofar as it is against the petitioners.

For Appellant : Mr.V.Balasubramanian

For Respondents : Mr.R.Malaichamy

R2- Tribunal



J U D G M E N T

S. VAIDYANATHAN, J. AND MOHAMMED SHAFFIQ, J.

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The present writ petition has been filed as against the order dated 18.11.2016 in O.A.No.1259 of 2013. The Department, by way of writ petition, is challenging the order of the Tribunal in granting the relief of reinstatement to the 1st respondent/applicant who was divested of his duties on account of his involvement in the criminal case and thereafter acquitted by the Criminal Court, as similarly placed persons had been reinstated in service.

2. The facts that led to the filing of the writ petition are:

(i) The 1st respondent/applicant before the Tribunal got appointment on compassionate grounds in the year 1995 on account of his father's demise on 25.10.1990. While working so, on account of a criminal case filed, he was deprived of employment with effect from 07.07.2003. The Judicial Magistrate, Alandur by order dated 12.01.2005, acquitted all the persons, who were involved in the criminal case including the 1st respondent/applicant. One of the acquitted officials, namely, M.Durairajan was reinstated into service after the orders passed by this Court and when the said benefit was denied to the 1st respondent/applicant, he filed O.A.No.339/2013, which was disposed of with a direction to the Department to consider and pass orders on the representation dated 09.07.2012. However, the request of the 1st respondent/applicant was rejected, which necessitated the filing of O.A. No. 1259 of 2013 seeking relief of reinstatement in service with all other consequential benefits.

(ii) The appellants/respondents before the Tribunal, in their reply statement, stated that the 1st respondent/applicant was engaged as daily wages mazdoor and based on the guidelines issued by the DoPT vide OM.No.42012/4/2000-Estt(D) dated 24.11.2000, the waiting list for appointment on compassionate grounds was restricted to 5% under direct recruitment for Group C and D posts and the waiting list beyond the 5% limit was discontinued. Since the wait list was discontinued, Postal Directorate by letter dated 25.07.2001, directed to consider such wait listed candidates for the vacant posts of Gramin Daak Sevak, if they were willing and eligible. Since the 1st respondent/applicant expressed his unwillingness, his name was removed from the waiting list for compassionate appointment in the year 2002 itself. Further, according to the Department, the 1st respondent/applicant and Durairajan were not similarly placed as Durairajan was a Temporary Status Casual Labourer, who



came under the guidelines of Casual Labourers (Grant of Temporary Status and Regularisation) Scheme. Besides, the 1st respondent/applicant was engaged as Mazdoor only with effect from 13.06.1997 i.e, after the cut-off date namely, 29.11.1989 for grant of Temporary Status Casual Labourers and hence, that right of the applicant also ceased, thereby depriving him of the benefit of the judgment of Madras High Court in W.P. No. 12974/2009 by which said Durairajan was granted the relief of reinstatement.

(iii) The Tribunal, after hearing the rival submissions, came to the conclusion that the 1st respondent/applicant is also similarly placed as that of Durairajan and as per the directions of this Court in W.P.No.16041 of 2014 to regularise the services of the respondents in the said case, who had been discontinued from the list of approved candidates for compassionate appointment, the 1st respondent/applicant is also entitled for regularisation. Accordingly, a direction was issued to the Department to consider the case of the 1st respondent/applicant on the same lines as in W.P.No.16041 of 2014 and issue orders within a period of three months.

Challenging the same, the Department has preferred this writ petition.

3. Learned counsel for the appellants would contend that since the procedure of maintaining waiting list of approved candidates for compassionate appointment beyond 5% limit was dispensed with, vide proceedings of the Department dated 24.11.2000, such waitlisted candidates were directed to be considered for vacant posts of Gramin Dak Sevak if they were willing and eligible. However, the 1st respondent expressed his unwillingness vide letter dated 11.12.2002 to accept the post of Gramin Dak Sevak and therefore, the 1st respondent's right to claim appointment on compassionate grounds ceased in the year 2002 itself. Further, the learned counsel would contend that the 1st respondent was acquitted in the criminal case by giving the benefit of doubt and it was not an honourable acquittal. It is also submitted by the learned counsel for the appellants that the 1st respondent was not engaged against any sanctioned post and was disengaged from the Department with effect from 07.07.2003. He is not similarly placed as that of the respondents in W.P.No.16041 of 2014 and therefore, he is not entitled to the benefit of regularisation in terms of the said judgment. Besides, the 1st respondent has been able to survive without this job for nearly 14 years, which implies that he has other source of subsistence. Therefore, the order of the Tribunal, which is against the concept of compassionate appointment requires to be set aside.



4. On the other hand, it is submitted by the learned counsel for the 1st respondent/applicant, when Durairajan, who was also involved in the criminal case and acquitted thereafter, like the 1st respondent, has been reinstated in service, the Department cannot adopt a different yardstick and grant reinstatement to one employee and deprive another on the ground quoting the proceedings dated 24.11.2000. It has been brought to the attention of this Court by the learned counsel for the 1st respondent/applicant that though it is stated that the 1st respondent had not accepted the offer of GDS post, the Directorate of Postal Department, vide letter dated 04.05.2006, had informed the 1st respondent that it is not feasible to offer GDS post on compassionate grounds to the dependants of regular Government Employees, who died in harness or retired on invalidation.

5. Heard the learned counsel for the parties.

6. The only issue to be decided in the writ petition is whether the Tribunal was correct in granting the relief of reinstatement to the 1st respondent on par with other employees. The factum of appointment on compassionate grounds that was granted in 1995 and thereafter, the 1st respondent/applicant was deprived of employment with effect from 07.07.2003 is not in dispute. The 1st respondent and others were involved in a criminal case and after acquittal, other persons similarly placed have been reinstated in service, of course, pursuant to the orders of this Court and it has also been confirmed by the Hon'ble Supreme Court. In terms of instruction of the Department dated 04.05.2006, the offer of appointment as GDS made to the 1st respondent has been withdrawn by the Department. When a person is involved in a criminal case, even after reinstatement, it will not be a bar for the Department to proceed against the employee departmentally. But, they cannot take recourse to the proceedings of the Department dated 24.11.2000 stating that there is a restriction with regard to the appointment on compassionate grounds. Even assuming that is so, it will be applicable only to new cases and not to those employees, who have already been considered for appointment on compassionate grounds and subsequently, deprived of employment upon misconduct/involvement in a criminal case. Until the order is set aside, there would be break in service of employee concerned. In the present case on hand, different yardstick cannot be applied to the 1st respondent/applicant when he is similarly placed like that of Durairajan. The 1st respondent has been deprived of employment as early as on 07.07.2003 and almost two decades have gone by. Though in the original application, it is mentioned that the 1st respondent is 55 years old, in the counter filed in the writ petition, it has been stated that he is 51 years of age. We are not going into the correctness or



otherwise of his age in the present writ petition. Depending upon the certificates that were produced before the authorities concerned at the time of entering into employment, the date of birth of the 1st respondent may be considered for continuation of his employment as we are of the view that the Tribunal has rightly granted the relief to the 1st respondent and that he shall be treated on par with Durairajan, who had the benefit of the order of this Court in W.P.No.12974 of 2009 as confirmed by the Apex Court.

7. Since time granted by the Tribunal has already expired, we are inclined to grant four months time from the date of receipt of a copy of this order to comply with the order passed by the Tribunal. However, taking note of the pendency of the matter before the Tribunal and this Court, we are inclined to reduce the backwages by 50%. It is made clear that the entire period of service of 1st respondent shall be taken into account as one of continuous service for the purpose of monetary and terminal benefits. The writ petition is disposed of accordingly. No costs. Connected W.M.P. is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

nv

To

1. The Chief Postmaster General,
Tamil Nadu Circle,
Anna Salai, Chennai - 600 002.
2. The Senior Superintendent,
Railway Mail Service (RMS),
Air Mail Sorting Division,
Chennai - 600 016.

+1cc to Mr.R.Malaichamy, Advocate, S.R.No.16167

+1cc to Mr.V.Balasubramanian, Advocate, S.R.No.16410

+1cc to Mr.V.Balasubramanian, Advocate, S.R.No.16410 (20/04/2022)

W.P.NO.23088 OF 2018

SSV(CO)
PBS/08/04/2022