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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2022

CORAM :

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

Writ Petition No.28276 of 2018

1. Union of India,
rep. by the Chief Postmaster General,
Tamilnadu Circle, Anna Salai,
Chennai 600 002.
2. The Director of Postal Services,
O/o. The Postmaster General,
Western Region (TN),
Coimbatore - 641 002.
3. The Superintendent of Post Offices,
Pollachi Division,
Pollachi - 642 001.
4. The Assistant Superintendent of Post Offices,
Pollachi North Sub-Division,
Pollachi - 642 001.
5. D.Selvaraj ... Petitioners

vs.

1. The Central Administrative Tribunal,
rep. by its Registrar,
Madras Bench, Chennai 600 104.
2. H.Surfracj Nawaz ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records on the file of the 1st Respondent in connection with the order passed in O.A.No.1482 of 2013, vide order dated 08.04.2016 and R.A.No.21 of 2016, dated 28.02.2017, quash the same by dismissing the Original Application filed by the 2nd Respondent herein.



For Petitioner : Mr.K.Subbu Ranga Bharathi,
Central Govt. Standing Counsel

For 2nd Respondent : Mr.R.Malaichamy

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O R D E R

(Order of the Court made by S.VAIDYANATHAN,J.)

Challenging the common order dated 08.04.2016 passed by the 1st Respondent/Central Administrative Tribunal, Chennai in O.A.No.1482 of 2013 batch of cases, and the order dated 28.02.2017 passed in R.A.No.21 of 2016, the above Writ Petition has been filed.

2. The 2nd Respondent herein is the Applicant before the Tribunal in O.A.No.1482 of 2013. Challenging the Show Cause Notice dated 23.10.2013 issued by the Superintendent of Post Offices, Pollachi Division, the Applicant has approached the Tribunal.

3. Pursuant to the Notification published by the Petitioner-Department calling for Applications in respect of Limited Competitive Examination to be held for the post of Postman, the Applicant applied and participated in the said examination. Minimum marks to be secured by a candidate in each subject was '9'. The Applicant secured 15 marks in Part-A; 22 marks in Part-B; 15 marks in Part-C(i) and 7 marks in Part-C(ii), totalling 59 marks. Though the Applicant obtained only 7 marks in Part C(ii), without noticing the same, he was declared successful in the said examination and based on the total marks secured by him, he was appointed by the Department. Later, on coming to know about the discrepancy, the competent Authority ordered revaluation of answer scripts and after revaluation, it was found that, the Applicant had secured only 8 marks in Part-C(ii). As the Applicant did not secure the qualifying marks of '9' in the said Paper, he was issued with a Show Cause Notice dated 23.10.2013 as to why his appointment to the cadre of Postman should not be terminated with immediate effect.

4. Before the Tribunal, the contention of the Applicant was that, when there is no fault on his part, he shall not be divested off from his duties. The Tribunal relied upon a decision rendered by this Court in W.P.No.17428 of 2015 in the case of S.Muthukrishnan vs. The Senior Superintendent of Police Offices, wherein, with reference to the Apex Court decision in the case of Vikas Pratap Singh vs. State of Chattisgarh (2013 (3) SLJ SC 155) that, the termination of appointees on the basis of revaluation of answers, would not only impinge upon their



economic security, but also adversely affect their career, the case of the Applicant therein was directed to be considered by adjusting their slots in future vacancies both in the post-based roster as well as in the vacancies.

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5. In a similar circumstance, a Division Bench of this Court in W.P.No.32187 of 2018 by an order dated 18.12.2018, has clearly held that, the employee is not at fault and it is the Department who declared him as promoted. For better appreciation, relevant portion of the said decision is extracted hereunder:

"5. We do not find any merit in this Writ Petition. Admittedly, it was not the fault of the second respondent. It is the petitioners' who declared him as promoted. Not only that, for the mistake committed by the petitioners, the second respondent cannot be made to suffer. Had he been declared as not qualified, he would have written the examination in the next selection. Now, at least two examinations were over in the interregnum. This selection was made in the year 2013. Now, we are in the year 2018. If the contention of the petitioners is accepted, then the second respondent will have to write the examination once again in the year 2018. Therefore, for the mistakes committed by the petitioners, second respondent will be affected by not getting promotion for five years. All juniors would have been promoted in the interregnum. Therefore, the principle of estoppel would certainly come into play. As of now, the second respondent has been working from the year 2013 onwards for over five years. Therefore, looking from any angle, we are not inclined to interfere with the order of the Tribunal."

6. Heard the learned counsel on either side and perused the material documents available on record.

7. Admittedly, this is not a case, where the employee has suppressed a fact and secured employment. It is the mistake on the part of the Petitioner/Department in not scrutinizing the records properly and giving appointment to the 2nd Respondent/Applicant. That being the case, pursuant to the interim order of this Court, when the 2nd Respondent/Applicant is still working, we are of the view that, after eight years of service, his services shall not be disturbed, more so, when there is no fault on his part .



8. In view of the aforesaid discussion, we do not find any reason warranting interference of the order passed by the Tribunal. Accordingly, this Writ Petition stands dismissed. No costs. Consequently, connected W.M.P.No.32976 of 2018 is closed.

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Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

(aeb)

To:

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5. The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai 600 104.

+1cc to Mr.R.Malaichamy, Advocate SR. No.16767

W.P.No.28276 of 2018

MG (CO)
PR (30/03/2022)