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W.P.Nos.10162, 19881 & 6514 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2023

CORAM :

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

AND

THE HON'BLE MR.JUSTICE P.B.BALAJI

W.P.Nos.10162, 19881 & 6514 of 2015

R.Shanmugam .. Petitioner in WP.10162/2015

P.Subramanian .. Petitioner in WP.19881/2015

M.Dhanalakshmi .. Petitioner in WP.6514/2015

v.

Union of India rep. by
the Chief Post Master General
Tamil Nadu Circle
Anna Salai
Chennai 600 002

The Superintendent of Post Offices
Namakkal Division
Namakkal 637 001

Senior Accounts Officer
O/o The Post Master General
Western Region (TN)
Coimbatore 641 002



W.P.Nos.10162, 19881 & 6514 of 2015

The Registrar
Central Administrative Tribunal
Chennai 600 104

..Respondents 1-4 in WP.10162/2015

Union of India rep. by
the Chief Post Master General
Tamil Nadu Circle
Anna Salai
Chennai 600 002

The Superintendent of Post Offices
Theni Division
Theni 625 531

The Registrar
Central Administrative Tribunal
Chennai 600 104

..Respondents 1-3 in WP.19881/2015

Union of India rep. by
the Chief Post Master General
Tamil Nadu Circle
Anna Salai
Chennai 600 002

The Superintendent of Post Offices
Virudhachalam Division
Virudhachalam 606 601

The Registrar
Central Administrative Tribunal
Chennai 600 104

..Respondents 1-3 in WP.6514/2015

W.P.No.10162 of 2015 is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling the records pertaining to the order of 4th respondent which is made in



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O.A.No.1207 of 2010 by an order dated 15.03.2011 and quash the same, consequent to direct the Respondents 1 to 3 to cure the shortage of qualification service by invoking Rule 88 of CCS (Pension) Rules, 1972 and grant pension and other retirement service benefits and thereby further direct to pay the arrears of pension and other retirement service benefits to the petitioner.

W.P.No.19881 of 2015 is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling the records pertaining to the order of the 3rd respondent which is made in O.A. No.118 of 2013 dated 02.06.2015 in so far as rejecting the claim of the petitioner to count the officiating service rendered by the petitioner from 30.03.2000 to 10.04.2003 and or to cure the shortage of 45 days of qualifying service by taking into account of 30 years of GDS Service to grant pension to the petitioner by invoking Rule 88 of CCS (Pension) Rules, 1972 and quash the same, consequent to direct the respondents 1 and 2 to grant minimum pension to the petitioner.

W.P.No.6514 of 2015 is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling the records pertaining to the order of 3rd Respondent which is made in O.A.No.786 of 2010 by its common order dated 31.01.2011 in so far as the petitioner's husband is concerned and quash the same, consequently to direct the Respondents 1 & 2 to grant pension and other retirement service benefits for the service rendered by the Petitioner's husband and thereby further direct to pay the arrears of pension and other retirement service benefits to the petitioner and also the family pension and arrears of family pension to the petitioner.

For Petitioners :: Mr.R.Malaichamy

For Respondents :: Mr.AR.L.Sundaresan
Additional Solicitor General
assisted by Mr.V.Chandrasekaran
Senior Panel Counsel for R1 to R3



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in WP.10162/15

R4-Tribunal

Mr.AR.L.Sundaresan

Additional Solicitor General

assisted by Mr.Venkataswamy Babu

Senior Panel Counsel for R1 & R2

in WP.19881/15

R3-Tribunal

Mr.AR.L.Sundaresan

Additional Solicitor General

assisted by Mr.P.G.Santhoshkumar

Senior Panel Counsel for R1 & R2

in WP.6514/15

R3-Tribunal

COMMON ORDER

(Order of the Court was made by D.KRISHNAKUMAR,J.)

The petitioners have filed these writ petitions aggrieved by the impugned orders passed by the Central Administrative Tribunal, rejecting their claim for pension on the ground that they have not put in the qualifying period of not less than 10 years service, as contemplated under Rule 49 of the CCS (Pension) Rules, 1972.

2. The facts in brief leading to the filing of the writ petitions are as follows. The petitioner in W.P.No.10162 of 2015 entered the service of the



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respondent Department as Extra Departmental Mail Deliverer on 27.08.1968, now called as Gramin Dak Sevak, and worked as such till 13.02.1998. He was selected to Group-D service and joined the post at Tiruchengode Head Post Office on 10.02.1998 and retired from service on the afternoon of 30.06.2006 on superannuation. According to the petitioner, the period of 9 years and 3 days of service put in by the petitioner should be counted as qualifying service for the purpose of pension. Similarly, the petitioner in W.P.No.19881 of 2015 was selected to the post of Group-D from among the Gramin Dak Sevaks under seniority quota vide order dated 30.03.2000 by the respondent Department and he was ordered to work as Group-D and Postman at Bodinayakanur HO from 30.03.2000 to 10.04.2003. According to the petitioner, the period of his engagement as substitute/officiating service in Group D from 30.03.2000 to 10.04.2003 should be taken as qualifying service for grant of pension. Similarly, the husband of the petitioner in W.P.No.6514 of 2015 was working as Extra Departmental Mail Carrier, now called as Gramin Dak Sevak, at Sitalur Branch Office and worked as such from 26.11.1968 to 30.12.1999. Her husband was promoted to the cadre of Group-D by an order dated



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01.01.1999 and he joined duty on 01.02.1999. He worked as such and retired on attaining the age of superannuation on 30.06.2008. According to the petitioner, the period of 9 years, 5 months and 28 days put in by her husband should be taken as the qualifying service for the grant of pension. Since the claim of the petitioners have been rejected by the Central Administrative Tribunal by the orders impugned herein, the petitioners are before this Court.

3. We have heard the learned counsel appearing for the petitioners and the learned Additional Solicitor General appearing for the respondent Department.

4. The learned Additional Solicitor General appearing for the respondent Department, relying upon Rule 14(2) of the CCS (Pension) Rules, 1972, which reads as follows,

“(2). For the purpose of sub rule (1), the expression 'service' means service under the Government and paid by that Government from Consolidated Fund of India or a Local Fund



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administered by that Government but does not include service in a non-pensionable establishment unless such service is treated as qualifying service by that Government.”,

submitted that since the Government has not provided the counting of a part of the service rendered in the capacity of EDA/GDS on absorption to regular departmental posts, the claim of the petitioners have been rejected by the respondent Department. The learned Additional Solicitor General has also relied upon the decision of the Hon'ble Supreme Court in Civil Appeal No.8497 of 2019 dated 08.11.2019 (Union of India and others v. Gandiba Behera) holding that there is no provision under the law on the basis of which any period of the service rendered by the respondents in the capacity of GDS could be added to their regular tenure in the postal department for the purpose of fulfilling the period of qualifying service on the question of grant of pension.

5. We also find merits on the submissions made by the learned Additional Solicitor General appearing for the respondent Department. The issue raised by the petitioners in these writ petitions is squarely covered by



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the decision of the Hon'ble Supreme Court in Civil Appeal No.8497 of 2019 dated 08.11.2019 (Union of India and others v. Gandiba Behera), wherein

the Hon'ble Supreme Court, in paragraphs 20 & 21, has held as follows:-

“20. For the reasons we have already discussed, we are of the opinion that the judgments under appeal cannot be sustained. There is no provision under the law on the basis of which any period of the service rendered by the respondents in the capacity of GDS could be added to their regular tenure in the postal department for the purpose of fulfilling the period of qualifying service on the question of grant of pension.

21. We are also of the opinion that the authorities ought to consider their cases for exercising the power to relax the mandatory requirement of qualifying service under the 1972 Rules if they find the conditions contained in Rule 88 stand fulfilled in any of these cases. We do not accept the stand of the appellants that just because that exercise would be prolonged, recourse to Rule 88 ought not to be taken. The said Rules is not number specific, and if undue hardship is caused to a large number of employees, all of their cases ought to be considered. If in the cases of any of the respondents' pension order has already been issued,



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the same shall not be disturbed, as has been directed in the case of *Union of India & others v. Registrar and another (supra)*. We, accordingly allow these appeals and set aside the judgments under appeal, subject to the following conditions:-

- (i) In the event the Central Government or the postal department has already issued any order for pension to any of the respondents, then such pension should not be disturbed. In issuing this direction, we are following the course which was directed to be adopted by this Court in the case of *Union of India & others v. Registrar and another (supra)*.
- (ii) In respect of the other respondents, who have not been issued any order for pension, the concerned ministry may consider as to whether the minimum qualifying service Rule can be relaxed in their cases in terms of Rule 88 of the 1972 Rules.”

It has also been brought to our notice that pursuant to the above directions, the Department has taken a policy decision on 25.09.2020, as communicated in the letter of the Assistant Director General (Pension), Department of Posts (Pension Section), Government of India dated



25.11.2020, ordering as follows:-

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“2. In compliance of Hon'ble Supreme Court Order dated 08.11.2019 passed in Special Leave to Appeal (C) No.13042/2014, the matter was examined in detail and the matter placed before the Postal Service Board (PSB) of this Department for deciding the issue as per the directions of the Hon'ble Supreme Court.

3. The Postal Services Board after detailed deliberations in its meeting held on 25.09.2020 decided as under:

“In view of directions of Apex Court dated 08.11.2019, CCS (Pension) Rules, 1972, GDS (Conduct & Engagement) Rules, 2011 and observations of IFW of this Department, the Board after in-depth deliberation decided that there cannot be a single definition of 'undue hardship' that can be applicable to all cases. Hence, all cases similar to the cases tagged with the SLP No.13042/2014 and decided by Hon'ble Supreme Court vide Order dated 08.11.2019, may be taken up as per Rule 49 of CCS (Pension) Rules, 1972 only where an inbuilt



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relaxation of three months has already been provided. No further relaxation on case-to-case/enmasse basis will be admissible in terms of Rule 88 of the CCS (Pension) Rules, 1972.”

4. The decision of Postal Service Board (PSB) in compliance of Apex Court order dated 08.11.2019 may be brought to the notice of all concerned for strict compliance. This may also be brought to the notice in consultation with CGSC of all concerned CAT/Courts in which similar such cases are pending for adjudication thereby ensuring early disposal/settlement of the cases.”

6. In the light of the above, we are convinced that there is no question of considering the request of the petitioners for the purpose of pensionary benefits. Therefore, finding no merits or reason to interfere with the impugned orders passed by the Central Administrative Tribunal, the writ petitions are dismissed. There shall be no order as to costs.

(D.K.K.,J.) (P.B.B.,J.)
28.07.2023

Index : yes/no
Neutral citation : yes/no

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