



WEB COPY



W.P. No. 11042 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2023

CORAM

THE HON'BLE MR. JUSTICE M.DHANDAPANI

W.P. No.11042 of 2016

and

W.M.P. Nos.9610 and 9611 of 2016

The Superintendent of Post Office
Department of Posts
Pudukkottai Division
Pudukkottai
Pudukkottai-622001.

... Petitioner

-VS-

1. The Presiding Officer
Central Government Industrial Tribunal
Cum Labour Court
Chennai.

2. V.Ganesan

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, calling for the records from the file of the first respondent made in I.D.No.31 of 2013 dated 12.06.2014 and quash the same.

For Petitioner : Mr.R.Rajesh Vivekananthan

For Respondents : Mr.R.Malaichamy (R2)



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ORDER

The petition has been filed seeking to quash the order passed by the first respondent made in I.D.No.31 of 2013 dated 12.06.2014.

2. It is the case of the petitioner that the second respondent, who is an outsider had worked as leave substitute in the leave vacancies and vacant posts of Gramin Dak Sevaks in Pudukottai Division for very short period. The second respondent is not a regular official employed/engaged following the recruitment rules for the GDS applicable from time to time.

3. Such being the position, the second respondent raised a dispute before the Central Government for regularization. The Central Government transferred the case to the first respondent/Tribunal. The Tribunal, vide order dated 12.06.2014, stated that the second respondent had been engaged for 300 days within two years starting from 15.02.2001 to 30.06.2002 and he had also worked for 150 days in 2008. Therefore, the case will come under Clause G of the scheme and therefore, he must be given the benefit of absorption as and when vacancy arises. Challenging the said order, the petitioner has filed the present writ petition before this Court.



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4. The learned counsel for the petitioner submitted that the second respondent is not regular employee and the petitioner have engaged in leave vacancy and the first respondent failed to see that the second respondent was not appointed as per the recruited rules. Further the dovetailed list was evolved as onetime measure in 1993 and is no longer maintained by the Department. Even the Dovetailed list was prepared for those who have worked prior to 11.02.1988. The list to be prepared for appointment to ED posts from among casual labourers and ED outsiders whose services have been engaged before 11.02.1988 only and they should have completed 240 days of service in any two years prior to 11.02.1988 or after 11.02.1988. Therefore, the findings of the first respondent is factually incorrect as the second respondent was never engaged for 240 days in any year. The learned counsel has relied upon the decision rendered by the Hon'ble Division Bench of this Court report in 2006 (1) CTC 25. Contrary to the said order, the Tribunal has passed the present impugned order and the said is liable to be set aside.

5. Per contra, the learned counsel for the second respondent submitted that admittedly second respondent engaged by the petitioner in the year 1993 and he raised a dispute claiming regularization in the service of the respondent



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and reinstatement. According to the second respondent, he was working more than 21 years of service with the petitioner Management. Therefore, he is entitled to protection under Section 25F of the ID Act and he is liable to reinstate in service with continuity of service, back wages and other monetary benefits. The Tribunal, after enquired the issue, allowed the petition in favour of the workman, which cannot be interfered with.

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

7. The facts of the case are not in dispute. Admittedly, the second respondent has been appointed by the petitioner as Extra Department Agent from the year 1988. Though the petitioner Management claimed that he was engaged as substitute on the leave period of a regular GDS and appointment on provisional basis on any vacant post as a stop gap engagement and not appointed regularly worked as leave substitute in the leave vacancies whereas the second respondent claimed that he was appointed as substitute for regular hand.

8. The Labour Court has passed award as per the reference made by the



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Government dated 23.12.1993 with regard to appointment to ED posts. Though

the second respondent has not challenged the said reference . However, the said reference was allowed to continue before the first respondent. Thereby, the first respondent, after discussing the scheme introduced by the petitioner, passed the impugned award as per the reference particularly clause-G. For better understanding, the said clause is extracted hereunder:

"Provisional appointees for ED posts who are appointed after 11.02.1988 and allowed to continue for more than 240 days will also be included in the dovetailed list, based on their seniority, if they had put in not less than three years of service as per DG (posts) letter No.43-4/77-PEN dated 18.05.1979. This provisional appointees who have completed 240 days in any two years after 11.02.88 will also be included in the dovetailed list, based on their seniority."

The above said scheme is squarely applicable to the petitioner as he was appointed in the year 1998 and rendered the service for more than 240 days. The Labour Court has elaborately discussed the issue and rightly passed an order stating that the petitioner herein was directed to include the workman in the seniority list prepared by the Management and considered for absorption in the department as Gramin Dak Sevak Delivery Agent as and when vacancy arises, which cannot be interfered with.



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9. With the above discussion, the writ petition is dismissed.

Consequently, the connected Miscellaneous Petitions are closed. No costs.

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Index: Yes/No

NCS : Yes/No

To

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M.DHANDAPANI, J.

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