



WP No.8211 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P. DHANABAL

WP No.8211 of 2018

- 1.Union of India,
Represented by the Secretary,
M/o Personnel Public Grievance and Pension
Department of Pensions & Pensioners Welfare,
3rd Floor, Lok Nayak Bhavan, Khan Market,
New Delhi – 110 003.
- 2.The Secretary,
M/o Communication & IT Department of Posts,
Dak Bhavan, Sanad Marg,
New Delhi – 110 011.
- 3.The Chief Postmaster General,
Tamil Nadu Circle,
Anna Salai,
Chennai- 600 002.



WP No.8211 of 2018

4.Senior Superintending RMS
Chennai Airmail Sorting Division,
Chennai – 600 106.

5. Head Record Officer,
Chennai Airmail Sorting Division,
Chennai – 600 016.

... Petitioners

versus

1.T.Pushparaj
2.The Registrar
Central Administrative Tribunal,
High Court,
Chennai – 10.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of Certiorari, to call for the records relating to the order passed by the second respondent Tribunal in OA No.1078 of 2016 dated 27.03.2017 and quash the same.

For the Petitioners :Mr.A.R.L.Sundaresan
Additional Solicitor General
for Mr.Venkataswamy Babu

For the Respondents :Mr.R.Malaichamy
for first respondent
second respondent-Tribunal



WP No.8211 of 2018

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ORDER

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

Challenging the order passed by the Tribunal in OA No.1078/2016, dated 27.03.2017, the petitioners have filed the present writ petition.

2. Brief facts of the case:

2.1. The first respondent was initially appointed in the petitioner Department as casual employee namely Mazdoor through Employment Exchange in the year 1985. The petitioner Department drawn up a scheme dated 12.04.1991 for the purpose of conferment of Temporary status to the casual employees. As per the Scheme, a person has to work for 8 hours a day and 240 days in a calender year and then he shall be entitled for temporary status. As the first respondent satisfied the conditions as per the Scheme, he was granted temporary status casual labour (TSCL) with effect from 01.01.2001 by memo dated 09.02.2001 by the fourth petitioner.



WP No.8211 of 2018

WEB COPY

Subsequently, as the first respondent was denied regularization for want of approval of vacant post by the screening committee for a long time, he had filed an original application in OA No.192 of 2016 before the Tribunal. The Tribunal, by order dated 08.02.2016, granted liberty to the first respondent to make representation and further directed the petitioner Department to pass orders on the said representation of the first respondent. Pursuant to the order in the said OA, he was appointed as Multi Tasking Staff (MTS) against UR vacant post by an order dated 19.02.2016 by the fourth respondent. He retired from service on attaining the age of superannuation on 30.06.2016.

2.2. The first respondent made a representation dated 26.05.2016 to the petitioner Department to count half of the Mazdoor service and the TSCL service for grant of pension under the old pension scheme. But the fourth petitioner by order dated 20.06.2016 rejected his claim. Aggrieved by the said rejection order, the first respondent had filed the instant Original Application in OA No.1078 of 2016 seeking to set aside the order of the



WP No.8211 of 2018

WEB COPY

fourth petitioner dated 20.6.2016 and to consequently direct the petitioner Department to count half of the service rendered by him in Mazdoor cadre from the year 1985 to 2000 and the half of the service rendered in TSCL cadre from 2001 to 18.02.2016 along with regular service for grant of pension under the old pension scheme and further to direct the petitioner Department to grant pension and other retirement benefits to him under the old pension scheme with all other attendant benefits. The Tribunal, by order dated 27.03.2017, allowed the said OA. Challenging the said order dated 27.03.2017 passed by the Tribunal, the petitioner Department has filed the present writ petition.

3. Mr.A.R.L.Sundaresan, learned Additional Solicitor General of India would submit that as the first respondent had served in the Department as a casual employee namely Mazdoor from the year 1985 till the end of 2000, the said service of the first respondent was not taken into account for the purpose of granting pensionary benefits. Subsequently, the first respondent herein was conferred with temporary status from 2001 and



WP No.8211 of 2018

WEB COPY

continued as such till February 2016 and this period also could not be taken into consideration for the simple reason that the service of the first respondent was regularized only from the year 2016 when he was appointed as Multi Task Staff by an order dated 19.02.2016. However, the Tribunal without considering the contention raised by the petitioner Department on the above aspects has allowed the instant OA. Hence, he seeks for setting aside the order passed by the Tribunal.

4. Learned counsel for the first respondent submits that the first respondent was conferred with the temporary status on 01.01.2001 by the petitioner Department. Therefore, the first respondent is entitled for counting the half of the service rendered in Mazdoor cadre from the year 1985 to 2000 and half of the service rendered in TSCL cadre from 2001 to 18.02.2016 as qualifying service and accordingly he is entitled for the grant of benefits under the old pension scheme. He further submitted that as the period during which the first respondent served as casual employee from the year 1985 till 2001 is having a lien on the date of his conferment of



WP No.8211 of 2018

temporary status with effect from 01.01.2001, the first respondent becomes eligible for pensionary benefits under the old pension scheme and if the first respondent's earlier service is taken into account for the purpose of regularisation of service then the first respondent is entitled under the old pension scheme. This aspect has been rightly considered by the Tribunal and therefore, nothing warrants to interfere with the order of the Tribunal, impugned in the writ petition.

5. Mr. A.R.L.Sundaresan, learned Additional Solicitor General of India, further contended before this court that the first respondent has not taken any effort for regularization of his service either from the date of initial appointment or from the subsequent date, when he was conferred with the temporary status. Thus, without regularization of his service, the prayer, as sought by the first respondent in the original application for the grant of pension under the old pension scheme is untenable.

6. Heard the parties and perused the materials available on record.



WP No.8211 of 2018

WEB COPY

7. The point for consideration in the present writ petition is 'whether the first respondent is entitled for the grant of pension under the old pension scheme?'. According to the petitioner Department, the first respondent was appointed as Multi Task Staff with effect from 19.02.2016 and retired from service on 30.06.2016. This clearly shows that the first respondent was appointed as Multi Task Staff only subsequent to the new pensionary scheme coming into force with effect from 01.01.2004. According to the petitioner Department, earlier service rendered by the first respondent cannot be taken into consideration for recognizing his service, under the old pension scheme.

8. The first respondent herein has made an attempt to convince the court that if the first respondent's earlier service is taken into account for the purpose of regularisation of service then the first respondent is entitled under the old pension scheme. We are not inclined to accept the contention of the first respondent for the reason that the first respondent has not taken



WP No.8211 of 2018

any effort for regularization of his service either from the date of initial appointment or from the subsequent date, when he was conferred with the temporary status. Thus, without regularization of his service, the prayer, as sought by the first respondent in the original application for the grant of pension under the old pension scheme is untenable. Therefore, there is force in the contention of the learned Additional Solicitor General of India that the order the Tribunal is liable to be set aside and consequently the writ petition is liable to be allowed.

8. In view of the above, this court is of the view that the prayer, as sought for by the first respondent in the original application for the grant of pension under the old pension scheme without seeking the prayer for regularization of service is not maintainable. On this aspect, we wish to interfere with the order of the Tribunal. Accordingly, we are of the view that the order of the Tribunal is liable to be set aside and writ petition has to be allowed.



WP No.8211 of 2018

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9. In fine, the order of the Tribunal in OA No.1078 of 2016, dated 27.03.2017 is set aside and writ petition is allowed with liberty to the first respondent to approach the authority, if so advised. There will be no order as to costs. Consequently, WMP No.10081 of 2018 is closed.

[D.K.K., J.] [P.D.B., J.]
22.12.2023

Index : Yes/No
Neutral Citation : Yes/No
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WP No.8211 of 2018

D.KRISHNAKUMAR, J.
and
P. DHANABAL, J.

(mrn)

WP No.8211 of 2018



WEB COPY



WP No.8211 of 2018

22.12.2023