



W.P.No.19931 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE P. B.BALAJI

W.P.No.19931 of 2021 and

WMP Nos.21182, 26512 of 2021

1. Union of India, rep. by the Chief Postmaster General,
Tamil Nadu Circle, Anna Salai, Chennai 600 002.

2. The Postmaster General, Chennai City Region,
O/o Chief Postmaster General,
Anna Salai, Chennai 600 002.

3. The Superintendent of Post Offices,
Vellore Postal Division, Vellore 632 001.

... Petitioners

Vs.

1.T. Jayabalan

2. The Registrar, Central Administrative Tribunal,
Chennai.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorari to calling for the records relating to the order passed by the 2nd respondent in O.A.No1437/2016, dated 01.11.2018 an quash the same.



W.P.No.19931 of 2021

For Petitioners : Mr.C.Kulanthaivel
For Respondents : Mr.K.M.Ramesh, Senior Counsel
for Mr.V.Subramani for R1.

ORDER

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

This writ petition has been filed to quash the impugned order passed by the Central Administrative Tribunal, Chennai in O.A.No1437/2016, dated 01.11.2018

2. The first respondent herein was initially engaged as GDSMD in the postal department at Abdullapuram SO in Vellore Division and while he was engaging as GDSMD, he was engaged as postman on temporary basis at Vellore Fort SO from 04.06.2001 to 31.10.2002 in the retirement vacant. Thereafter, from 11.11.2002, he was appointed as postman at Vellore Fort SO on regular basis, and subsequently, he had retired from service on attaining the age of superannuation on 31.01.2012 and the total service period in the regular post was 9 years 2 months and 16 days. The first



W.P.No.19931 of 2021

respondent did not fulfill the condition of 10 years of qualifying service and in view of the same, he is not eligible for pensionary benefit. Therefore, he has given a representation dated 22.10.2012 to the Postmaster General, Chennai Region, to take up the service period on temporary basis, in the regular post, as Postman from 04.06.2001 to 31.10.2002 for pensionary benefits. But it was rejected, vide order dated 30.11.2012, as he did not fulfill the condition of 10 years of qualifying service. Therefore, he filed O.A.No.1464/2013 before the Tribunal and vide order dated 01.03.2016, the Tribunal has directed the authority to reconsider the decision taken under the impugned order and to pass an order, specifying the reasons and communicate the same to the applicant. Pursuant to the above said order, the first respondent had passed an order dated 28.06.2016, rejecting the request of the applicant. Against which, the petitioner had filed O.A.1437/2016 before the Tribunal and vide order dated 01.11.2018, the Tribunal has directed the authority to treat the applicant as eligible for pension under CCS (Pension) Rules 1972 and pass necessary orders within two months. Challenging the above said order, the Department has filed the instant writ petition.



W.P.No.19931 of 2021

3. The learned counsel for the writ petitioners/Department submitted that, the first respondent was not recruited as Postman, but he was appointed only as GDS and was allowed to work as Postman from 04.06.2001 to 31.10.2002 in the leave vacancy only on needed basis, not an officiating capacity. Further, no recruitment rules and formalities are followed to arrange a GDS/Outsider on needed basis to manage the day to day work in the delivery sector. The first respondent was appointed as Postman w.e.f. 11.11.2002, considering his position of GDS and against 25% of quota of vacancies reserved for GDS agents on seniority and he had undergone training from 1.11.2002 10.11.2002 in the capacity of GDS only. Therefore, the service rendered by the first respondent from 04.06.2001 to 31.10.2002 was purely on temporary basis as an outsider in the unapproved capacity and hence, the same will not count for any purpose including pension.

3.1. The Rule 6 of Service Rules for Gramin Dak Sevak (GDS) says that, " the Sevaks shall not be entitled for any pension". While working as GDS, the first respondent was ordered to work as Postman purely on temporary arrangement. Further, GDS and their working conditions are



W.P.No.19931 of 2021

governed by separate set of rules viz, GDS (Conduct & Employment) Rules 2001, now GDS (Conduct & Engagement) Rules 2011 and the Rule 3 of the said rules deals with the definition and the Note II lays down the some conditions for holding the post of GDS. A GDS shall be outside the civil service of the Union and he shall not be required to perform duty beyond a maximum period of 5 hours in a day. Apart from that, there is no provision in Rule 14(2) of CCS (Pension) Rules for grant of pension to those who working in non-pensionable establishments. Therefore, the Postal Services Board, considering all the above, observed that there can be no relaxation of provisions contained in Rule 49 of CCS (Pension) Rules, which provides for a minimum of 10 years of departmental service to become eligible for pension.

3.2. The issue of giving weightage to GDS service is a policy decision and as per the directives of DOPT, the postal services board, which met on 30.09.2013, took up the issue and after considering various factors, decided that there is no scope for counting part of GDS service toward regular employment to enable them to make up for the shortfall required.



W.P.No.19931 of 2021

The Tribunal, without considering above facts, has passed the impugned order and hence, the same is liable to be quashed.

4. The learned Senior Counsel for the first respondent submitted that, earlier, the first respondent had filed O.A.No.1464/2013, as against the order passed by the Department dated 30.11.2012, rejecting the claim of the petitioner for pensionary benefits. Before Tribunal, in the above O.A.No.1464/2013, the Department has taken a specific ground that the service period from 04.06.2001 to 31.10.2002 rendered by the first respondent should be excluded from calculating the eligibility period for pension, as per the ground set out in Annexure A8. The Tribunal has discussed the issue elaborately and accepting the contention of the respondent has observed that half of the service rendered between 04.06.2021 and 31.10.2002 would come to more than 8 months and if it is added to the 9 years, two months and 16 days service, it would come to above 9 years and 10 months of service and hence, as per Rule 49 sub rule (3) he had put in 10 years of service and accordingly, direct the department authority to reconsider the decision taken under the impugned order and



W.P.No.19931 of 2021

he was appointed as postman in the regular vacancies. According to the writ petitioners/Department, the said period cannot be considered for granting pensionary benefits, as per Rule 13 of the CCS (Pension) Rules.

7. At this juncture, it is to be mentioned that, in an earlier order passed on the similar application filed by the first respondent in O.A.No. 1464/2013, the Tribunal has observed thus.

6. At the outset itself, we would like to fumigate our mind with the following government of India's decision.

" ... (2) Counting half of the service paid from contingencies with regular service. Under Article 368 of the CSRs (Rule 14) period of service paid from contingencies do not count as qualifying service for pension. In some cases, employees paid from contingencies are employed in types of work requiring services of whole-time workers and are paid on monthly rates of pay or daily rates computed and paid on monthly basis and on being found fit brought on to regular establishment. The question whether in such cases service paid from contingencies should be allowed to count for pension and if so, to what extent has been considered in the National Council and in pursuance of the recommendation of the Council, it has been decided that half the service paid from contingencies will be allowed to count towards pension at the time of absorption in regular employment subject to the following conditions, viz.:-



- (a) Service paid from contingencies should have been in a job involving whole-time employment (and not part time for a portion of the day).
- (b) Service paid from contingencies should be in a type of work or job for which regular posts could have been sanctioned, e.g. mails, chowkidars, khalasis, etc.
- (c) The service should have been one for which the payment is made either on monthly or daily rates computed and paid on a monthly basis and which though not analogous to the regular scale of pay should bear some relation in the matter of pay to those being paid for similar jobs being performed by staffs in regular establishments.
- (d) The service paid from contingencies should have been continuous and followed by absorption in regular employment without a break.
- (e) Subject to the above conditions being fulfilled, the weightage for past service paid from contingencies will be limited to the period after 1st January, 1961, for which authentic records of service may be available.

(G.I., M.F., O.M.No.4.12(1)-E. V/68, dated the 14th may 1968)"

A mere running of the eye over it unambiguously and indisputably would highlight and spotlight the fact that even half of the temporary service rendered by the application between 04.06.2001 and 31.10.2002 as postman in the vacant post concerned or even in a post which was not a vacant regular post or postman would be counted for pensionary benefit. In the impugned order, the aforesaid OM of the government was not at all taken note of. In



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W.P.No.19931 of 2021

fact, the respondent authority was under the impression that if at all any adhoc service was put in by the applicant, then to some extent that would be considered etc. As such, the approach is found to be incorrect. Half of the service rendered between 04.06.2001 and 31.10.2002 would come to more than 8 months and if it is added to the 9 years, two months and 16 days of service it would come to above 9 years and 10 months of service. As per Rule 49, sub rule (3), if a person in a half year had put in 3 months of service, it should be taken as 6 months service. **Accordingly, it is clear that he had put in 10 years of service.** Unless there are facts contrary to our above findings, the authority has to, by placing reliance on the aforesaid OM, grant pensionary benefit to the applicant. Accordingly, we would direct the respondent authority to reconsider the decision taken under the impugned order and pass an order specifying the reasons and communicate the same to the applicant within a period of two months from the date of receipt of copy of the order."

Therefore, from the above, it is clear that, considering the merits of the case, the Tribunal has come to the conclusion that the first respondent herein had put in 10 years of service and further the Tribunal has observed that unless any contrary materials to the above, the Department has to reconsider the decision and to pass appropriate orders with specific reasons.



W.P.No.19931 of 2021

8. In the second rejection order passed by the Department in Memo No.C-1,12,373 dated 28.06.2016, it was observed by the Department as follows.

a GDS shall be outside the civil service of the Union and he shall not be required to perform duty beyond a maximum period of 5 hours in a day and as per the instructions of the postal directorate, New Delhi in letter No.47/31/72-SPB I dated 7.12.1972, vacancies in postman/Group 'D' may be offered GDS in an unapproved capacity on daily wage basis in preference to outsiders and it was clearly mentioned that such casual appointment does not confer on him any right for regular absorption in the departmental post which will be done as per the existing recruitment rules only.”

If the stand of the Department is as above, they have to challenge the earlier order itself passed by the Tribunal in OA No.1464/2013 dated 01.03.2016. However, they have not challenged the above said order and hence, it has become final. Therefore, as per the decision of the Tribunal in the above said earlier order, the first respondent had put in 10 years of service. As such, the department was directed to re-consider the decision taken by them and to pass an order specifying the reasons and communicate the same to the applicant. Further, as observed by the Tribunal, there is no other



W.P.No.19931 of 2021

contrary materials placed before this Court by the Department for rejecting the claim of the first respondent once again.

9. It is to be mentioned that if the petitioner/Department is really aggrieved by the earlier order passed by the Tribunal, they have to challenge or to seek modification of the order. But, without doing so, the petitioners/Department had taken up the application filed by the first respondent for consideration and had reconsidered the claim of pensionary benefits, however, once again turned into their original stand, by rejecting the application, contrary to the earlier order passed by the Tribunal. In such circumstances, we are not inclined to go into the contention of the petitioner/Department, since in the earlier order, the Tribunal had decided that the first respondent had put 10 years of service and that decision was not challenged by the Department. Therefore, we accept the contention of the first respondent and the impugned order passed by the Tribunal does not warrant any interference by this Court.



W.P.No.19931 of 2021

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10. Accordingly, this writ petition is dismissed. This order has been passed, based on the peculiar facts and circumstances of this case and cannot be cited as a binding precedent for any other similar cases. No costs. Consequently, connected miscellaneous petitions are closed.

(D.K.K.J.)

(P.B.B.J.)

18.08.2023

Internet: Yes/No

Index : Yes/No

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To

1. The Chief Postmaster General, Union of India,
Tamil Nadu Circle, Anna Salai, Chennai 600 002.
2. The Postmaster General, Chennai City Region,
O/o Chief Postmaster General,
Anna Salai, Chennai 600 002.
3. The Superintendent of Post Offices,
Vellore Postal Division, Vellore 632 001.



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W.P.No.19931 of 2021

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mst

W.P.No.19931 of 2021

18.08.2023