



W.P.Nos. 20491 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2023

CORAM

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MR.JUSTICE P. DHANABAL**

**W.P.No. 20491 of 2018
and WMP.No.24077 of 2018**

1. Union of India
rep by its Secretary,
Department of Posts,
Dak Bhavan, Sansad Marg,
New Delhi – 110001.

2.The Postmaster General
Western Region,
Coimbatore– 641002.

3.Senior Superintendent of Post Offices,
Salem East Division,
Salem – 636001.

..Petitioners

Vs

1.A.Gnanasekaran

2. The Central Administrative Tribunal,
Madras Bench,
Chennai -600109.

..Respondents



W.P.Nos. 20491 of 2018

Prayer : Writ petition is filed under Article 226 of Constitution of India praying to issue a writ of certiorari, calling for the records relating to the order passed by the 1st respondent in O.A.No. 310/01021/2016, dated 20.04.2017 and quash the same.

For Petitioners : Mr.AR.L. Sundaresan, ASG
Assisted by
Mr. V.Balasubramanian

For Respondents : Mr.M.S.Velusamy &
Mr. P.R.Sathyanarayanan – R1
R2-Tribunal.

ORDER

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

Challenging the order passed by the tribunal in O.A.No. 310/01021/2016, dated 20.04.2017, the present writ petition has been filed by the department.

2. The learned Additional Solicitor General appearing for the petitioners-department has submitted that the 1st respondent was initially appointed as GDS in Salem East Postal Division on 23.01.1979, thereafter he was appointed as Group -D by Memo dated 25.02.2004 issued by the 3rd respondent for the vacancy relating to the year 2002. Subsequently, he was



W.P.Nos. 20491 of 2018

promoted to the post of Postman on 11.12.2008 and retired on superannuation on 28.02.2015. For grant of pension under Old Pension Scheme, the date of appointment must be prior to 01.01.2004. Since 1st respondent was appointed in the post of Group D on 15.03.2004 (i.e after 01.01.2004), he is eligible for pension only under New Pension Scheme . The tribunal without considering the above facts, has held that the appointment of the 1st respondent ought to have been notionally dated back to 2002 for the purpose of reckoning his qualifying service for pensionary benefits and accordingly directed the petitioner department to grant pension under old pension scheme, which is illegal and liable to be set aside.

3. On the other hand, the learned counsel for the 1st respondent has strongly objected the said submissions made by the learned Additional Solicitor General and submitted that the department had initiated action to fill up the vacancies related to the year 2002 only in the year 2004 by conducting DPC on 03.02.2004 and hence he could join the promotional post only on 15.03.2004, therefore he was classified under the New Pension Scheme introduced w.e.f. 01.01.2004.



W.P.Nos. 20491 of 2018

4. The learned counsel for the 1st respondent has further submitted that since the vacancy is related to the year 2002, he should be considered under the old pension scheme. The tribunal has rightly considered the above aspect and the directed the petitioners-department to grant benefit to the 1st respondent, therefore nothing warrants interference by this Court.

5. During the course of arguments, the learned counsel for the 1st respondent has placed the order of the Division Bench of this Court in W.P.No.18404 of 2017, dated 22.09.2023 before this Court and submitted that the facts involved in the present case is also similar, therefore the 1st respondent is entitled for the benefits as granted by this Court in the above writ petition.

6. It is seen from the above order of this Court that one vacancy was approved by the Screening Committee and the same was allotted to Thanjavur Division vide letter dated 13.11.2003 and for the above said approved vacancy, one D.Rajendran, husband of the 2nd respondent therein was selected by the Selection Committee in its meeting held on 31.12.2003 and accordingly, the 2nd respondent therein had joined the said post on 29.01.2004. Since the said post was approved by the screening committee



W.P.Nos. 20491 of 2018

on 13.11.2003 and selected the husband of the 2nd respondent therein on 31.12.2003, which is much prior to 01.02.2004, the Division Bench of this Court directed the petitioners-department therein to grant benefits under old pension scheme.

7. On facts of case on hand, one vacancy for the Group-D cadre has been approved by the Screening Committee under ADR Plan for the year 2002 as per the Chief Postmaster General, Tamil Nadu Circle letter No. REP/2-2/2003/ADR, dated 13.11.2003. The Departmental Promotion Committee for selection of Group D was convened on 03.02.2004 and the 1st respondent was selected by order dated 25.02.2004 and joined duty as Group -D on 15.03.2004. As per Ministry of Finance, Department of Expenditure letter in OM No. F.No.1(7)(2)/2003/TA/19, dated 14.01.2004 the 1st respondent was brought under New Pension Scheme, since his appointment was made after 01.01.2004.

8. Admittedly, the Departmental Promotion Committee for selection Group D post was convened on 03.02.2004 for the vacancy of the 2002. The 1st respondent was selected and appointed to the said post and joined duty only on 15.03.2004. Therefore, it is clear that the appointment of the 1st



W.P.Nos. 20491 of 2018

respondent was made much after 01.01.2004 and he is not entitled for pension under old pension scheme. In view of the above, the order passed by the tribunal in O.A.No.310/01021/2016, dated 20.04.2017 directing the petitioner department to grant pension to the 1st respondent under Old pension scheme by taking into consideration the year of vacancy that arose in 2002 is unsustainable in law and the same is liable to be set aside. There is some force on the contention of the learned Additional Advocate Solicitor General for the petitioner-department.

9. In the result, the impugned order passed by the tribunal in O.A.No.310/01021/2016, dated 20.04.2017 is set aside. The Writ petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

(D.K.K., J.) (P.D.B., J.)
15.11.2023

Index: Yes / No
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6 / 8



W.P.Nos. 20491 of 2018

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