



W.P.No.7823 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2023

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE P. DHANABAL

W.P.No.7823 of 2018

WMP No.9764 of 2018

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

3. Post Master General, Western Region (TN),
Coimbatore 641 002.

4. Senior Superintendent of Post Offices,
Tirupur Division, Tirupur 641 601.

... Petitioners

Vs.

1. N.Doraisamy

2. The Registrar, Central Administrative Tribunal,
Chennai 600 104.

... Respondents

Prayer: Writ petition filed under Article 226 of Constitution of India to issue a writ of certiorari to call for the records in O.A.310/01419/2014, dated 19.08.2016 on the file of the second respondent and quash the same in so far it is against the petitioners.



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For petitioners : Mr.V.Balasubramanian

For Respondents : Mr.R.Malaichamy for first respondent

R2 - Tribunal

ORDER

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

This writ petition has been filed, as against the order passed by the Tribunal in O.A.No.310/01419/2014, dated 19.08.2016, in and by which, the *petitioners herein were directed to reconsider the case of the first respondent for pension by adding period from the date of vacancy to the actual date of appointment as notional service for the purpose of determining the qualifying service under the pension rules and pass speaking orders within a period of 3 months.*

2. The brief facts leading to the filing of the writ petition is as follows.

The first respondent herein was initially appointed as Gramin Dak Sevak at Kemmampalayam BO w.e.f. 1.1.1974. Subsequently, he was selected and appointed as Groud-D on 16.01.2003 for the backlog vacancy of the year 2001 and after rendering 9 years, 5 months and 15 days, he retired from service on 30.06.2012. According to the first respondent, in

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W.P.No.22822/2010, which is similar in nature to the case of the first respondent, this court has directed the Department to take into consideration of the service of 9 years 6 months and 13 days rendered by the petitioner therein , as qualifying service of 10 years for pension benefit. The first respondent had rendered nearly 29 years of service as GDS. Further, if his service of 9 years 5 months and 15 days rendered in Group D is taken into account as qualifying service, as granted by this Court in similar matter, as stated supra, he will get pensionary benefit. Therefore, he gave representation dated 01.07.2014 to the department, however, it was rejected by the Department, vide order dated 01.08.2014. Challenging the above order, the first respondent had approached the Tribunal, wherein, the Tribunal has given the direction to the petitioners, as stated supra to consider the case of the first respondent. Challenging the same, the Department has filed the present writ petition.

3. The learned counsel appearing for the petitioners submitted that, the first respondent had joined as Group-D employee on 01.01.2003 and he



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retired from service on 30.06.2012 and he had rendered the service below 10 years. As per the decision of the Board of Postal Department, the first respondent has not completed the qualifying service of 9 years, 9 months and hence, he is not entitled for pension.

4. The learned counsel for the petitioners has also brought to the notice of this court that, in a similar matter in W.P.No.1485/2014, this Court, vide order dated 15.11.2023, has allowed the writ petition filed by the Union of India, Postal Department and hence, on the same line, orders may be passed.

5. At this juncture, it is worthwhile to extract the relevant portion of the order passed by this Court in W.P.No.1485/2014, dated 15.11.2023, which runs as follows.

4. The learned Additional Solicitor General for the petitioners has brought the notice of this Court to the decision of this Court made in W.P.Nos. 10162, 19881 & 6514 of 2015, dated 28.07.2023, wherein this Court by relying upon the communication dated 25.11.2020 issued by the Government of India, Ministry of Communications, Department of Posts (Pension Section), New Delhi and accepting the contention of the



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respondent- department therein, dismissed the said writ petition. The relevant paragraphs of the said judgment are extracted below;

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 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



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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, 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



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the Assistant Director General (Pension), Department of Posts (Pension Section), Government of India dated 25.11.2020, ordering as follows:-

“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 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



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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.

5. On facts, the 2nd respondent herein has rendered service only 9 years 5 months 2 days and he has not completed minimum qualifying service of 9 years 9 months to consider for grant of pensionary benefits as per Rule 49 of CCS (Pension) Rules 1972.

6. In view of the decision of the Division Bench of this Court in W.P.Nos. 10162, 19881 & 6514 of 2015, dated 28.07.2023 cited supra and considering the fact that the 2nd respondent has not completed the qualifying service of 9 years 9 months in the petitioners-department, the impugned order passed by the tribunal in O.A.No. 1408 of 2010, dated 13.12.2012 is liable to be set aside.

7. In the result, the order passed by the tribunal in O.A.No. 1408 of 2010, dated 13.12.2012 is set aside. The writ petition filed by the department is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

6. Admittedly, the first respondent has rendered the service 9 years 5 months and 15 days only in Group D. Therefore, in the light of the order passed in W.P.No.1485/2014, dated 15.11.2023, and also considering the



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fact that the first respondent has not completed the qualifying service of 9 years and 9 months in the Department, the impugned order passed by the Tribunal is liable to be set aside.

7. Accordingly, this writ petition is allowed and the order passed by the Tribunal in O.A.No.310/01419/2014, dated 19.08.2016 is set aside. No costs. Consequently, connected miscellaneous petition is closed.

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

22.11.2023

Internet: Yes/No
Index : Yes/No
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To

1. The Registrar, Central Administrative Tribunal,
Chennai 6000 104.
2. The Chief Postmaster General, Union of India, rep. by
Tamilnadu Circle, Anna Salai, Chennai 600 002.
3. Post Master General, Western Region (TN),
Coimbatore 641 002.
4. Senior Superintendent of Post Offices,



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