



W.P.No.7547 of 2019

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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.7547 of 2019
and WMP.No.8197 of 2019**

- 1.Union of India Rep. by,
The Secretary,
Ministry of Communication & I.T.,
Department of Posts, Dak Bhavan,
Sansad Marg, New Delhi-110 011.
- 2.The Chief Postmaster General,
Tamilnadu Circle,
Chennai-600 002.
- 3.Postmaster General,
Central Region, Tamilnadu,
Tiruchirapalli-620 001.
- 4.Senior Superintendent of Post Offices,
Thanjavur division,
Thanjavur-613 001.
- 5.Superintendent of Post Offices,
Pattukottai Division, Pattikottai-614 601.



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6.Superintendent of Post Offices,
Kumbakonam Division,
Kumbakonam-613 001.

7.Asst.Superintendent of Post Offices,
Thanjavur South Sub Division,
Thanjavur-613 001.

8.Asst. Superintendent of Post Offices,
Thanjavur North Sub Division,
Thanjavur-613 001.

... Petitioners

Vs.

1.Central Administrative Tribunal,
Rep. by its Registrar,
Madras Bench, Chennai-600 104.

2.T.Sankararamalingam

3.S.Appavu

4.S.Ramesh

5.S.Senthil

6.K.Nandhini

7.R.Latha

8.S.Sasikumar

9.K.Kaliyamoorthy

10.T.Bharathiraja

11.K.Rajarajan

12.M.Ramdass

13.B.Ravichandran

14.V.Ravichandran

15.R.Rajendran

16.G.Sundararajan

17.L.Nagarajan

18.M.Mohanasundaram

.. Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorari calling for the records of the first respondent and quash the order passed by the first respondent dated 11.04.2017 in O.A.No.310/1269/2015.

For Petitioners : Mr.AR.L.Sundaresan, Additional Solicitor General,
for M/s.D.Geetha,
Senior Central Government Panel Counsel

For Respondents : Mr.R.Malaichamay for R2 to R18
R- Tribunal.

ORDER

[Order of the Court was made by *D.KRISHNAKUMAR, J.*]

The petitioners Department, challenging the order of the Central Administrative Tribunal, Madras Bench dated 11.04.2017 made in O.A.No.310/01269/2015, in and which the Tribunal has directed the petitioners Department to treat the services of the respondents 2 to 18 herein / applicants rendered as GDS as qualifying service for pension under CCS(Pension) Rules, 1972 and accordingly settle the service benefits to them including arrears of pension, has filed the instant writ petition.



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2. The respondents 2 to 18 / applicants were appointed as EDA/GDS in the department of posts in various periods between the years 1980 and 2003. Subsequently, they were selected for higher cadre of MTS, Postman in various periods between the years 2004 to 2014. Even though they were selected against the vacancy earmarked for outsider quota, their admission into competitive examination was based on completing minimum required service as GDS. The respondents 2 to 18 claim that they are governed by CCS(Pension) Rules, 1972 and they come under Old Pension Scheme instead of New Pension Scheme (NPS) as they should not be treated as new entrants to the department in view of their past service as GDS in Group D Post. Hence, they filed the original application for grant of pension under Old Pension Scheme, which came to be considered in favour of the respondents 2 to 18, against which the present writ petition has been filed.

3. Mr.AR.L.Sundaresan, learned Additional Solicitor General appearing for the petitioners submitted that the respondents 3 and 15 are appointed prior to 01.01.2004, as the notification for the examination was published and approved



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by the screening committee prior to 31.12.2003 and appointment was made after the notification and therefore, they are eligible for Old Pension Scheme and as far as the other respondents are concerned, the notification for appointment was made after 01.01.2004 and therefore, they are not eligible for grant of pension under Old Pension Scheme.

4. The learned Additional Solicitor General appearing for the petitioners department has relied upon the decision of this Court in W.P.Nos. 10162, 19881 & 6514 of 2015, dated 28.07.2023, wherein the Division Bench of 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 respondent- department therein, had 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



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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 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



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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 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



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(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 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."



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5. The facts involved in the present writ petition is similar to the case relied by the learned Additional Solicitor General appearing for the petitioners. The respondents 3 and 15 herein had completed the qualifying service as prescribed under Rule 49 of CCS (Pension Rules) 1972 and in the light of the aforesaid Division Bench decision of this Court, the order of the tribunal is confirmed in respect of the respondents 3 and 15 alone and in respect of other private respondents, the order of the Tribunal is liable to be set aside.

6. In the result, the order of the Tribunal in O.A.No.310/01269/2015 dated 11.04.2017 is confirmed in respect of respondents 3 and 15 and in respect of other respondents, the impugned order of the Tribunal is set aside. Accordingly, the writ petitions stands partly allowed to the above extent. The respondents (except respondents 3 and 15) are granted liberty to challenge the Circular / Communication dated 25.11.2020 issued by the Government of India, Ministry of Communications, Department of Posts (Pension Section), New Delhi, in the manner known to law. No costs. Consequently, connected miscellaneous petition is closed.



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Intex : Yes/No
Internet : Yes/No
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(D.K.K., J.) (P.D.B., J.)
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D.KRISHNAKUMAR, J.
AND
P.DHANABAL, J.

Jvm

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