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W.P.No. 22915 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2023

CORAM

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MR.JUSTICE P. B. BALAJI**

W.P.No. 22915 of 2018

M.Krishnan

..Petitioners

Vs

1.Union of India
Rep.by the Secretary,
Ministry of Communications & IT,
Department of Posts,
Dak Bhavan, Sansad Marg,
New Delhi-110001.

2.The Chief Postmaster General
Tamil Nadu Circle,
Anna Salai,
Chennai-600002.

3.The Postmaster General
Southern Region (TN)
Madurai -625002.

4.The Superintendent
Postal Stores Depot,
Tirunelveli – 627002.

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5. The Central Administrative Tribunal,
Rep. By the Registrar
Chennai -600104.

..Respondents

Prayer: Writ Petition is filed under Article 226 of Constitution of India praying to issue writ of certiorarified Mandamus, calling for the records pertaining to the order of the 5th respondent which is made in O.A.No. /310/00896/2017 dated 03.07.2018 and quash the same, consequent to direct the respondents 1 to 4 to grant eligible pension to the petitioner under old pension scheme with all other attendant benefits.

For Petitioners : Mr.R.Malaichamy

For Respondents: Mr. V.Chandrasekaran, Senior Panel
Counsel - R1 & R2
R2 – Tribunal.

ORDER

D.KRISHNAKUMAR, J.

Brief facts of the case is that the petitioner joined the services of the postal departmnet as GDS MD (Gramin Dak Sevak Mail Deliverer) at Attalanallur BO on 03.12.1979 and appointed as MTS on 28.04.2009. After rendereing service of 8 years, 1 month and 3 days in MTS cadre, the petitioner had retired from service on 31.05.2017. As per Rule 49 of CCS



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(Pension) Rules 1972, a minimum of 9 years and 9 months qualifying service is required for grant of pension. The petitioner had rendered about 36 years service both in GDS and MTS but he was not granted pension. Therefore, for short of 1 year and 8 months qualifying service rendered in GDS cadre about 28 years can be adjusted by invoking under Rule 88 of CCS (Pension) Rules, 1972. Without considering the above fact, the respondent-department has rejected to grant pension to the petitioner. The petitioner had filed an application in O.A.No.310/00896/2017 before the Tribunal, Chennai and the same was dismissed by order dated 03.07.2018. Hence the petitioner has filed the present writ petition.

2. The learned counsel appearing for the petitioner has fairly placed a decision of the Hon'ble Division of this Court rendered in W.P.Nos. 10162, 19881 & 6514 of 2015, dated 28.07.2023, wherein the Hon'ble Division Bench of this Court by considering the judgment of the Hon'ble Supreme Court in Civil Appeal No. 8497 of 2019, dated 08.11.2019 (Union of India and others Vs. Gandiba Behera) and the policy decision of the department dated 25.09.2020, dismissed the claim made by the petitioners therein. The



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relevant portion of the judgment is extracted below;

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“4. The learned Additional Solicitor General appearing for the respondent Department, relying upon Rule 14(2) of the CCS (Pension) Rules, 1972, which reads as follows,

“(2). For the purpose of sub rule (1), the expression 'service' means service under the Government and paid by that Government from Consolidated Fund of India or a Local Fund administered by that Government but does not include service in a non-pensionable establishment unless such service is treated as qualifying service by that Government.”,

submitted that since the Government has not provided the counting of a part of the service rendered in the capacity of EDA/GDS on absorption to regular departmental posts, the claim of the petitioners have been rejected by the respondent Department. The learned Additional Solicitor General has also relied upon 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) holding that 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.

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



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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 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



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(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 (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



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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."

3. In view of the aforesaid decision of this Court, the present writ petition is dismissed. No costs.

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

29.08.2023

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D.KRISHNAKUMAR, J.,
&
P.B.BALAJI, J.

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To
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Ministry of Communications & IT,
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2.The Chief Postmaster General
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