



W.P.No.17098 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:17.08.2023	Delivered on:15.09.2023
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CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No.17098 of 2019

P.Kandasamy

... Petitioner

Vs.

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

2.The Director of Postal Services,
O/o. the Postmaster General,
Southern Region (TN),
Madurai-625 002.

3.Superintendent of Post Offices,
Karaikudi Division,
Karaikudi-630 003.

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

.. Respondents



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Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari Mandamus calling for the records of 4th respondent pertaining to its order which is made in OA/310/01283/2013 dated 25.04.2019 and quash the same, consequent to direct the respondents 1 to 3 to post the petitioner as GDS BPM or in the next cadre with pay protection attached to the post of GDS SPM and pay the arrears of difference of pay and allowances to the petitioner.

For Petitioner : Mr.R.Malaichamy

For Respondents : Mr.Venkatasamy Babu

ORDER

(Judgment of the Court was made by P.B.BALAJI,J.)

The unsuccessful applicant before the Tribunal in OA/310/01283 of 2013 is the Writ Petitioner.

2. The case of the Writ Petitioner is that while he was working as GDS Sub Post Master at Uraiyur SO he was suspended from duty on an allegation of misappropriation. An enquiry officer was appointed and he was removed from service. The said termination order was challenged by him in O.A.No.180 of 2010 and the Tribunal modified the punishment and ordered reinstatement of the petitioner. Thereafter, the petitioner was reinstated on 04.04.2011 as GDS Mail Packer instead of GDS Sub Post



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Master. It is the case of the petitioner before the Tribunal that as the Tribunal had directed reinstatement of service, he ought to have been appointed only as GDS Sub Post Master which has TRCA benefits and not as GDS Mail Packer.

3. The case of the respondents before the Tribunal was that the reinstatement of the petitioner and posting as GDS Mail Packer was only at his request and own volition as it was indicated to him that Urayur Sub Post Office had been downgraded and there is no TRCA available to the post of GDS Sub Post Master. The grievance of the petitioner before the Tribunal was that even though he had agreed for being appointed to the post as GDS Mail Packer, he was entitled to TRCA protection. The Tribunal finding that in the earlier order of reinstatement in O.A.No.180 of 2010 that there was no specific order to reinstate him to same post as claimed by the petitioner, dismissed the O.A.

4. We have heard Mr.R.Malaichamy, learned counsel for the petitioner and Mr.Venkatasamy Babu, learned counsel for the respondents. We have also perused the records and the order of the Tribunal.

5. The learned counsel for the petitioner would contend that once the Tribunal had ordered reinstatement, the petitioner had to be given pay



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protection and cannot be given a lower salary.

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6. Per contra, learned counsel for the respondents would submit that when the petitioner himself had agreed to take the available post of GDS Mail Packer, he cannot seek for higher pay or pay protection especially since the job and responsibilities of Mail Packer are entirely different and distinct from a Sub Post Master's job and responsibilities. Moreover the services of Mail Packer is only part time in nature and therefore under no stretch of imagination the petitioner can be given pay protection.

7. We have considered the rival submissions advanced by the respective counsel.

8. Firstly, knowing fully well that the post of GDS Sub Post Master was not available, the petitioner himself volunteered and opted to be posted as GDS Mail Packer. Secondly, we have also perused the order of the Tribunal in O.A.No.180 of 2010, which has become final. The operative portion of the said order directs reinstatement of the petitioner into service, clearly holding that the petitioner would not be entitled to any backwages for the period that he was out of service. In the teeth of such an order, the petitioner cannot claim any pay protection, especially when he had accepted to be appointed to the post of GDS Mail Packer which carried a



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lower salary/pay. However, with regard to the observation of the Tribunal that there is no specific direction in the earlier order of the Tribunal to reinstate the petitioner as GDS Sub Post Master is concerned, we are unable to approve of such a finding of the Tribunal. When the Tribunal orders reinstatement, the natural consequence is only that the concerned employee is reinstated to the same post which he held prior to the termination order. However, in the peculiar circumstances of the present case when the petitioner himself had volunteered to accept a lower post viz., the GDS Mail Packer, he cannot now claim any pay protection.

9. At the same time taking a sympathetic view in the matter that the petitioner was directed to be reinstated way back on 04.04.2011, we deem it fit to dispose of the Writ Petition with the following directions:

i) The order of the Tribunal in O.A.No.310/01283 of 2013 dated 25.04.2019 is confirmed.

ii) It is open to the Writ Petitioner to make a representation to the respondents seeking appointment to a post equivalent to GDS Sub Post Master and on such representation being made within four weeks from the date of receipt of a copy of this order, the respondents shall consider the same and pass suitable orders, appointing the petitioner to any post



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equivalent to that of GDS Sub Post Master subject to vacancies and in accordance with law.

10. We also make it clear that such a direction is given purely on sympathetic consideration and it would not be open to the petitioner to allege disobedience or contempt on the part of the respondents in not positively considering the request of the petitioner, as we have made it very clear that consideration at the hands of the respondents shall be strictly in accordance with law and also subject to any existing vacancies or vacancies that may arise in the near future.

11. The Writ petition is accordingly disposed of. No costs.

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

15.09.2023

Internet : Yes

Index: Yes/No

Neutral Citation: Yes/No

mjs

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D.KRISHNAKUMAR, J.,
and
P.B.BALAJI,J
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Pre-delivery order in
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