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W.P.Nos. 17635 of 2020

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. 17635 of 2020
and WMP.No. 21863 of 2020**

1. Union of India
rep by its Secretary,
Department of Posts,
Ministry of Communication & IT
Dak Bhavan, Sansad marg,
New Delhi – 110001.

2. Postmaster General
Central Region (TN)
Tiruchirappalli – 620001.

3. Senior Superintendent of Post Offices,
Cuddalore Division,
Cuddalore – 607001.

..Petitioners

Vs

1. The Registrar
Central Administrative Tribunal,
Chennai.

2. K.G. Subramanian

..Respondents



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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.87 of 2015, dated 16.06.2017 and quash the same.

For Petitioners : Mr.AL.L.Sundaresan, ASG
For Mr.V.Chandrasekaran
For Respondents : R1 – Tribunal
Mr.R.Malaichamy - R2

ORDER

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

Challenging the order passed by the tribunal in O.A.No.87 of 2015, dated 16.06.2017, the present writ petition has been filed by the department.

2. According to the learned Additional Solicitor General appearing for the petitioner department , 2nd respondent was appointed in the petitioner department in Group -D post on 28.10.2022 and retired on superannuation after rendering 9 years 1 month and 3 days service, whereas the pensionable service is 10 years. The request of the 2nd respondent to count his appointment from the year of vacancy was rejected by the petitioner department by order dated 01.10.2012. The tribunal without considering the factual aspects, has directed the department to grant pension to the 2nd respondent by taking into consideration of the year of vacancy which arose



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prior to the year 2002. Therefore, the impugned order of the tribunal is liable to be set aside.

3. The learned Additional Solicitor General appearing for the petitioner department has relied upon the decision of this Court made 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, 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:-



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“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:-



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(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 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:



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“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 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.”

4. On facts, the 2nd respondent was appointed in the petitioner department in Group -D post on 28.10.2022 and retired on superannuation after rendering 9 years 1 month and 3 days service. The facts involved in the present writ petition are also similar to the case relied by the learned Additional Solicitor General appearing for the petitioner. The 2nd respondent herein had not completed qualifying service as prescribed under Rule 49 of CCS (Pension Rules) 1972, hence the order of the tribunal is liable to be set aside.

5. The learned counsel for the 2nd respondent contended that the 2nd respondent was appointed on 28.10.2002 to a backlog vacancy and therefore if the year of vacancy is taken into consideration, he would be eligible for consideration. Hence he seeks liberty to challenge the said decision of the department in its meeting held on 25.09.2020 before the appropriate forum.

6. In the result, the order passed by the tribunal in O.A.No.87 of 2015, dated 16.06.2017 is set aside. The writ petition filed by the department is allowed with the above liberty. No costs. Consequently,



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connected Miscellaneous Petition is closed.

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

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Index: Yes / No

Internet: Yes

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To

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