



WEB COPY



W.P.Nos. 1594 of 2022

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. 1594 of 2022  
and WMP.No.1730 of 2022**

1.Union of India  
rep by The Chief Postmaster General  
Tamil Nadu Circle,  
Chennai-600002.

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

3.The Senior Superintendent of Post Offices,  
Tiruchirappalli Division,  
Tiruchirappalli – 620 001.

..Petitioners

Vs

1.The Registrar,  
The Central Administrative Tribunal,  
Chennai Bench,  
Chennai -600109.

2. A. Karunanidhi

..Respondents



W.P.Nos. 1594 of 2022

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 1<sup>st</sup> respondent in O.A.No. 1300 of 2016, dated 14.12.2017 and quash the same.

For Petitioners : Mr.AR.L. Sundaresan, ASG

For Respondents : Mr P.R.Sathyanarayanan – R2  
R1-Tribunal.

### **ORDER**

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

Challenging the order passed by the tribunal in O.A.No. 1300 of 2016, dated 14.12.2017, the present writ petition has been filed by the department.

2. The learned Additional Solicitor General appearing for the petitioners-department has submitted that the 2<sup>nd</sup> respondent was initially appointed as GDS in Anthanakurichi Branch Office, thereafter he was appointed as Group -D by order of the Superintendent of Post Offices, Tiruchirappalli Division, dated 13.02.2004 and joined as Group -D in the department on 26.02.2004. Subsequently, he was promoted to the post of



W.P.Nos. 1594 of 2022

Postman w.e.f. 06.12.2008 and retired on superannuation on 31.07.2015.

For grant of pension under Old Pension Scheme, the date of appointment must be prior to 01.01.2004. Since 1<sup>st</sup> respondent was appointed in the post of Group D on 26.02.2004 (i.e after 01.01.2004), he is eligible for pension only under New Pension Scheme . The tribunal without considering the above facts, has held that the appointment of the 1<sup>st</sup> respondent ought to have been notionally dated back to 2002 for the purpose of reckoning his qualifying service for pensionary benefits and accordingly directed the petitioner department to grant pension under old pension scheme, which is illegal and liable to be set aside.

3. On the other hand, the learned counsel for the 2<sup>nd</sup> respondent has strongly objected the said submissions made by the learned Additional Solicitor General and submitted that the department had initiated action to fill up the vacancies related to the year 2002 only in the year 2004 by conducting DPC on 13.02.2004 and hence he could join the promotional post only on 15.03.2004 and classified under the New Pension Scheme introduced w.e.f. 01.01.2004.



W.P.Nos. 1594 of 2022

WEB COPY

4. The learned counsel for the 2<sup>nd</sup> respondent has further submitted that since the vacancy is related to the year 2002, he should be considered under the old pension scheme. The tribunal has rightly considered the above aspect and the directed the petitioners-department to grant benefit to the 2<sup>nd</sup> respondent, therefore nothing warrants interference by this Court.

5. During the course of arguments, the learned counsel for the 1<sup>st</sup> respondent has placed the order of the Division Bench of this Court in W.P.No.18404 of 2017, dated 22.09.2023 before this Court and submitted that the facts involved in the present case is also similar, therefore the 1<sup>st</sup> respondent is entitled for the benefits as granted by this Court in the above writ petition.

6. It is seen from the above order of this Court that one vacancy was approved by the Screening Committee and the same was allotted to Thanjavur Division vide letter dated 13.11.2003 and for the above said approved vacancy, one D.Rajendran, husband of the 2<sup>nd</sup> respondent therein



W.P.Nos. 1594 of 2022

was selected by the Selection Committee in its meeting held on 31.12.2003 and accordingly, the 2<sup>nd</sup> respondent therein had joined the said post on 29.01.2004. Since the said post was approved by the screening committee on 13.11.2003 and selected the husband of the 2<sup>nd</sup> respondent therein on 31.12.2003, which is much prior to 01.01.2004, the Division Bench of this Court directed the petitioners-department therein to grant benefits under old pension scheme.

7. On facts of case on hand, the vacancy for the Group-D cadre has been approved by the Departmental Promotion Committee for selection of Group D was convened on 13.02.2004 and the 2<sup>nd</sup> respondent joined duty as Group -D on 26.02.2004. As per Ministry of Finance, Department of Expenditure letter in OM No. F.No.1(7)(2)/2003/TA/19, dated 14.01.2004 the 2<sup>nd</sup> respondent was brought under New Pension Scheme, since his appointment was made after 01.01.2004.

8. In view of the above, it is clear that the 2<sup>nd</sup> respondent was selected and appointed as Group -D on 13.02.2004 to the said post and joined duty



W.P.Nos. 1594 of 2022

only on 26.02.2004 (i.e after 01.01.2004), therefore, he is not entitled for pension under old pension scheme. There is some force on the contention of the learned Additional Advocate Solicitor General for the petitioner-department. We hold that the order passed by the tribunal in O.A.No.1300 of 2016, dated 14.12.2017 directing the petitioner department to grant pension to the 2<sup>nd</sup> respondent under Old pension scheme by taking into consideration the year of vacancy that arose in 2002 is unsustainable in law. We are of the view that the impugned order passed by the tribunal is liable to be set aside.

9. In the result, the impugned order passed by the tribunal in O.A.No.1300 of 2016, dated 14.12.2017 is set aside. The Writ petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

**(D.K.K., J.)      (P.D.B., J.)**

**15.112023**

Index: Yes / No

Internet: Yes

ak



W.P.Nos. 1594 of 2022

WEB COPY

To

1.The Chief Postmaster General  
Tamil Nadu Circle,  
Chennai-600002.

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

3.The Senior Superintendent of Post Offices,  
Tiruchirappalli Division,  
Tiruchirappalli – 620 001.



WEB COPY



W.P.Nos. 1594 of 2022

**D.KRISHNAKUMAR, J.  
AND  
P. DHANABAL, J.  
ak**

**W.P.No. 1594 of 2022  
and WMP.No.1730 of 2022**

**15.11.2023**