



W.P.No.2368 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 30.08.2023

Delivered on: 20.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No.2368 of 2017

and

W.M.P.No.2353 of 2017

1. Union of India,
represented by its Postmaster General,
Southern Region (TN),
Madurai – 625 002.

2. The Senior Superintendent of Post Offices,
Virudhunagar Division,
Virudhunagar – 626 001.

3. The Assistant Superintendent of Post Offices,
Aruppukottai Sub Division,
Aruppukottai – 626 101.

... Petitioners

Vs.

1. The Registrar,
Central Administrative Tribunal,
Chennai.

2.M. Murugesan,
No.1/120, Mariamman Pettam Street,
Tiruchuli, Virudhunagar District – 626 129.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records from the file of the 1st respondent made in O.A. No.1396 of 2013 dated 28.03.2016 and quash the same.

For Petitioners : Mr. AR. L. Sundaresan ASG,
for S. Diwakar, SPC

For Respondents : Tribunal [for R1]

Mr. R. Malaichamy [for R2]

JUDGMENT

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

The Employer, namely Union of India represented by its Postmaster General and others are the petitioners before us, aggrieved by the order passed by the Tribunal in O.A. No.1396 of 2013 dated 28.03.2016.

2. The brief facts that are necessary for effective adjudication of the Writ petition are as follows:

The 2nd respondent in this Writ petition, as appellant in O.A. No.1396/2013, was appointed as GDS MC on 09.04.1975 and thereafter he was transferred as GDSMD/MC in 1977. Subsequently, on retirement of a postman, Mr. S. Appanan at Aruppukottai on 31.07.2002, the 2nd



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respondent being willing to work as postman on a temporary basis in the vacant post was appointed to the said post. Thereafter, the 2nd respondent continued to work as postman on a temporary basis from 05.10.2002 to 15.08.2005, subsequent to which, he was selected as a postman under seniority quota (of GDS) on 28.07.2005. Pursuant to the same, he was appointed as a regular postman on 28.08.2005. The 2nd respondent claiming that the services rendered by him as a postman between 05.10.2002 and 15.08.2005 ought to be considered and accordingly his pension be decided, approached the Tribunal seeking relief.

3. The petitioners, as respondents before the Tribunal objected to the said claim of the 2nd respondent on the ground that his appointment as a postman on 31.07.2002 was only temporary and also there is a break in the said arrangement once in every 90 days. It was also contended that the 2nd respondent had also agreed that the arrangement was only temporary and based on the same he would not claim any regular appointment in the cadre.



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4. The Tribunal allowed the O.A. holding that the 2nd respondent was appointed on officiating basis to the post Postman on 05.10.2002 and applying Rule 13 of the CCS (Pension) Rules, 1972 held that the services rendered by him on temporary basis would also be accounted for the purposes of pension and finally concluded that the 2nd respondent is entitled to be considered under the Old Pension Rules.

5. The petitioners have challenged the said order of the Tribunal on the ground that the appointment of the 2nd respondent as a Postman was only a temporary arrangement and it would not confer any right on the 2nd respondent; Rule 13 of CCS (Pension) Rules 1972 would apply only to the Government servant who was appointed substantively and the same cannot be applied to the 2nd respondent who was not a Government servant; the post of GDS namely Gramin Dak Sevak was unique to the Postal Department and under the said post, the persons who are appointed as GDS were not Government employees and they were governed by a separate set of Rules called Gramin Dak Sevak (Conduct & Engagement) Rules, 2011; the nature of work of a GDS was part time compared to the regular



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Government service, which has to be for a minimum of 8 hours of service; the order of the Tribunal was contrary to settled legal position and Office Memorandums.

6. We have heard Mr. AR. L. Sundaresan, Additional Solicitor General, assisted by Mr. S. Diwakar, Senior Panel Counsel, learned counsel for the petitioners and Mr. R. Malaichamy, learned counsel for the 2nd respondent. We have also perused the records as well as the order of the Tribunal.

7. Mr. R. Malaichamy, the learned counsel for the 2nd respondent, invited our attention to the additional typeset of papers filed by the 2nd respondent, specifically to the case of one Mr. M. Murugesan, in the correspondence in Memo No.B6/6/2004-05 dated 28.07.2005. Relying on the said communication, the learned counsel for the 2nd respondent would state that the petitioners themselves have stated that the 2nd respondent has been selected for promotion to the cadre of Postman on seniority basis under Annual Direct Recruitment Plan for the years 2003 and 2004



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together and therefore it is a clear case that his appointment was prior to 2004 and even the petitioners were not clear as to the actual date on which the 2nd respondent was promoted and in such circumstances, when the petitioners themselves have mentioned the year as 2003 (by stating as 2003 and 2004), the 2nd respondent ought to have been found eligible under the Old Pension Scheme.

8. We have perused the said document. Even in the said Memo dated 28.07.2005, it is mentioned as:

“In accordance with the Postmaster-General, Southern Region, Tamilnadu, Madurai 625 002 memo REP/2-3/ADR/2003 dated 24.02.2005 and 09.03.2005.....”

It is also mentioned that

“On verification, if it is found that he is not eligible for promotion, this selection will be cancelled. The above GDS is to be appointed as Postman on satisfactory production of”



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Thus, even the selection for promotion was clearly after 2005, after the relevant date viz., 01.01.2004. It is also made clear in the very same Memo that the said promotion was subject to screening / verification. Therefore we are unable to accept the argument of the learned counsel for the 2nd respondent that merely because the years 2003 and 2004 have been mentioned in the said Memo, the 2nd respondent's case should be considered under the Old Pension Scheme.

9. Admittedly, the 2nd respondent was called upon to take up the post of postman on officiating basis and right from the inception, it was made clear that the said engagement was purely temporary. It is admitted by the 2nd respondent that he had expressed his willingness in this regard and had clearly stated that he would not claim any right of regular appointment in the cadre. It is also an admitted fact that thereafter the applicant/2nd respondent herein was selected under the seniority quota (of GDS) in the DPC and he was appointed as a Postman on 28.08.2005. There is no difficulty with regard to the application of the New Pension Scheme to the 2nd respondent who has been appointed only after 01.01.2004. The only



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issue that requires to be answered by us is to whether the 2nd respondent having served as a Postman on a temporary basis from 05.10.2002 to 15.08.2005 would be entitled to count the said period in order to bring him under the Old Pension Scheme.

10. Though the Tribunal has applied Rule 13 of the CCS (Pension) Rules, 1972 and allowed the application of the 2nd respondent, for the following reasons, we are unable to accept the said conclusion arrived at by the Tribunal:

(i) The post of GDS is not a Civil Service, rendering the service of GDS to be similar as same as Government employees.

(ii) the 2nd respondent has consciously given his willingness to work as a Postman on temporary basis and has also clearly stated that he would not claim any benefits arising out of the said temporary appointment.

Therefore, this arrangement as a Postman pursuant to DPC under Seniority Quota on 28.07.2005 being an appointment after 01.01.2004, it is only the New Pension Scheme that would apply to the 2nd respondent.



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11. The Tribunal clearly erred in relying on Rule 13 of the CCS (Pension) Rules, 1972, which cannot be extended to the 2nd respondent who was working only as GDS. The Additional Solicitor General also invited our attention to the relevant rule viz., Rule 13 of the CCS (Pension) Rules, 1972 and also the GDS (Conduct & Engagement) Rules, 2011 which are extracted for ready reference:

13. Commencement of qualifying service

Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantive or in an officiating or temporary capacity:

Provided that officiating or temporary service is followed without interruption by substantive appointment in the same or another service or post:

Provided further that-

(a) in the case of a Government servant in a Group 'D' service or post who held a lien or a suspended lien on a permanent pensionable post prior to the 17th April, 1950, service rendered before attaining the age of sixteen years shall not count for any purpose, and

(b) in the case of a Government servant not covered by Clause (a), service rendered before



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attaining the age of eighteen years shall not count, except for compensation gratuity.

(c) the provisions of Clause (b) shall not be applicable in the cases of counting of military service for civil pension under Rule 19.

12. From the above, it is clear that the 2nd respondent being, admittedly, a GDS, was not eligible for pension. The mere fact that he was appointed on a temporary basis to work as Postman between 05.10.2002 and 15.08.2005 would not automatically entitle him to come within the Old Pension Scheme. Moreover Rule 13 also contains a Proviso which states that *“officiating or temporary service is followed without interruption by substantive appointment in the same or another service or post, would alone entitle the Government service to the qualifying service commencing from the day on which the employee takes the charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity”*.

13. Here, admittedly, the 2nd respondent was only serving as GDS and therefore the application of Rule 13 to the 2nd respondent in the first place



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was totally erroneous. The Tribunal has not addressed the specific stand taken by the petitioners in their reply statement that the 2nd respondent was only a temporary employee and that his service as a GDS and his employment on a temporary basis as a Postman cannot be counted in order to bring the 2nd respondent under the Old Pension Scheme.

14. The petitioners relied upon a Judgment of this Bench reported in W.P. No.10162, 19881 and 6514 of 2015 dated 28.07.2023. In the said Judgment, we have discussed and delivered a common order, when we have dealt with a similar issue as to whether a GDS was entitled to count his service rendered as a Postman on a temporary basis. We have followed the decision of the Hon'ble Supreme Court in *Civil Appeal No.8497 of 2019 dated 08.11.2019 in the case of Union of India and Others vs. Gandiba Behera* and held that the similar post of an employee like the 2nd respondent was not entitled to count the period of service rendered on a temporary basis, for the purpose of pensionary benefits. The facts of the present case are also very similar to the facts that were before us in the said Writ Petition Nos.10162, 19881 and 6514 of 2014.



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15. Though the 2nd respondent relied upon the following judgements:

- (a) **N. Venkatramani vs. Indian Bank and another report in 2005 (2) TLNJ 290.**
- (b) **Union of India and another vs. Surender Singh Parmer reported in CDJ 2015 SC 065.**
- (c) **T. Kothandapani vs. Commodore, Senior Staff Officer Bureau of Sailore Cheeta Camp Mankurd reported in 2015 (4) MLJ 168.**
- (d) **Parameshwar Nanda and Others reported in Civil Appeal No.505-531 of 2020.**
- (e) **Muktabai vs. State of Maharashtra and others reported in 2022 (5) Mh.L.J. 128),**

in view of the discussion made herein above and also in the light of the decision rendered by us in the W.P. Nos. 10162, 19881 and 6514 of 2014, we do not deem it fit and necessary to discuss the various judgments relied on by the learned counsel for the 2nd respondent. In any event, we also find them to be not relevant to the facts of the present case.

16. Finally it was contended by the learned counsel for the 2nd respondent that in and by the order dated 22.08.2023, one K. Madeswaran was considered and switched over from the New Pension Scheme to the Old Pension Scheme. Citing the said proceedings, the learned counsel for



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the 2nd respondent would contend that the 2nd respondent was also similarly placed and his name also has been mentioned in the communication dated 22.08.2023 and therefore there was discriminatory action on the part of the petitioners and on this ground also, the 2nd respondent ought to be considered to the benefits of the Old Pension Scheme. However, we find that the said order passed in favour of the other employee K. Madeswaran was totally on a different reasoning. In his case, the date of notification was on 27.11.2003, before the relevant date viz., 01.01.2004 and he was also recruited in the year 2002. His case, therefore, cannot be equated to the case of the 2nd respondent.

17. All the judgements that have been relied upon by the learned counsel for the 2nd respondent and the applicability of the CCS rules was never in question and the cases revolved on the issue of the employee having a service, at superannuation, less than 10 years and in such cases, whether the provisional temporary or officiating service was to be counted for the qualifying service for pension or not.



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18. Here, admittedly the 2nd respondent, who served only as GDS and the same cannot be treated as Government service. The ratio laid down in the above cases, cannot be applied to the facts of the present case.

19. The clinching factor in this case, in our view, is that when the 2nd respondent was assigned temporary work of Postman, he was not a Government servant at all. Therefore, in such circumstances, his claim of his serving as a Postman between 05.10.2002 and 15.08.2005 is to be counted as qualifying service for the grant of Old Pension Scheme cannot be entertained.

20. For all the above reasons, we are unable to justify the findings arrived at by the Tribunal.

21. In fine, the petitioners are entitled to succeed in the Writ petition and the order passed by the Tribunal in O.A. No.1396 of 2013 dated 28.03.2016 is hereby set aside. Costs made easy. Consequently, the connected miscellaneous petition is closed.

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

20.09.2023

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To
The Registrar,
Central Administrative Tribunal,
Chennai.



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

(mjs)

Pre-delivery judgment in
W.P.No.2368 of 2017
and
W.M.P.No.2353 of 2017

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