



W.P.No.18404 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2023

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE P. B.BALAJI

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1. Union of India,
rep. by its Secretary, Department of Posts,
Ministry of Communication & IT Dak Bhawan,
Sansad Marg, New Delhi 110 001.
2. The Chief Postmaster General,
Tamil Nadu Circle, Chennai 600 002.
3. The Postmaster General, Central Region (TN),
Tiruchirapalli, 620 001.
4. The Senior Superintendent of Post Offices,
Thanjavur Division, Thanjavur 613 001.
5. Assistant Superintendent of Post Offices,
Thanjavur North Sub Division,
Thanjavur 613 001.
6. Assistant Superintendent of Post Offices,
Thanjavur South Sub Division,
Thanjavur 613 001.

...Petitioners

//vs/



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1. The Registrar, Central Administrative Tribunal,
Madras Bench, High Court Campus,
Chennai- 600 104.

2. R.Jayanthi

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India seeking to issue Writ of Certiorarified, calling for the entire records on the file of the Central Administrative Tribunal, pursuant tot he impugned order dated 23.08.2016 passed in O.A.No.1508/2014 on the file of the first respondent and quash the same.

For Petitioners : Mr.V.Chandrasekaran,
Senior Panel Counsel

For Respondents : Mr.R.Malaichamy for second respondent

ORDER

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

This writ petition has been filed by petitioners to quash the order dated 23.08.2016 passed in O.A.No.1508/2014 by the Central Administrative Tribunal, Chennai Bench, wherein, the petitioners herein were directed process the pension and terminal benefits of the second respondent's husband under CCS (pension) Rules 1972 and also consider



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the case of the second respondent for family pension from the date of death of her husband.

2. The brief facts leading to the filing of present writ petition is as follows.

The second respondent had filed the above said application before the Tribunal stating that her husband had entered into the service of the petitioners Department as Extra Departmental (ED) Packer (now known as Gramin Dak Sevak (GDS) on 10.08.1973 in Thanjavur Postal Division, vide order dated 04.03.1973 and thereafter, by virtue of his service seniority for the year 2002, he was selected as postman, vide order dated 16.01.2004 and he was promoted as Postman from 29.01.2004, vide order dated 28.01.2004. However, the said appointment was cancelled and hence, he filed O.A.No.516/2006 and it was allowed by the Tribunal and the appeal before this Court in W.P.No.8008/2007 and also the appeal before the Hon'ble Supreme Court in SLP (Civil) No. CC 14773/2008 were dismissed. Subsequently, he was reinstated into service from 15.12.2008 with all consequential benefits. Thereafter, the husband of the second respondent



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retired on attaining the age of superannuation on 31.05.2014 and after his retirement, he died on 12.07.2004. Therefore, the second respondent herein requested the petitioners/Department to grant family pension and also to grant service benefits of her deceased husband.

2.1. According to the second respondent, her husband was selected for the post of postman, arising out the 1/3 vacancies earmarked for GDS on seniority basis for the year year 2022, however, he was appointed only in the year 2004 and hence, his services purported to have been counted technically from the year 2002 for grant of old pension and other service benefits as he had acquired more than 12 years of qualifying service. However, the petitioners/Department has counted his service as postman only from 29.01.2004, which is covered under new pension scheme. It is the contention of the second respondent that, her husband was appointed only on 29.1.2004 and if he would have been appointed in time in the year 2002, he would have been come under the old pension scheme and hence, she is entitled for old pension and on the ground also, she had filed the application before the Tribunal. The Tribunal, vide order dated,



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23.08.2016, has allowed the application as stated supra. Challenging the above order, the Department has filed the present writ petition.

3. The learned counsel for the petitioners submitted that, as per the memo dated 14.01.2004 in file No.1(7)(2)/2003/TA/19 of Department of Expenditure, Ministry of Finance, Government of India, a new scheme, replacing the existing system of defined benefit pension system was introduced, which came into force w.e.f. 01.01.2004 and it is applicable to all new entrants to Central Government Services, except Armed Forces, joining government service on or after 01.01.2004. Further, in the above said scheme, nowhere stated about the year of vacancy, for which appointment is made and it is a policy decision of the government. Therefore, the second respondent is not entitled for granting pension under old pension system, since her husband was appointed on regular basis as postman only on 29.01.2004, i.e. after the crucial date 01.01.2004.

3.1. The learned counsel for the petitioners has also relied upon the Rule 13 of the CCS (Pension) Rules 1972, and submitted that, as per the



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above Rule, qualifying service of a Government servant shall commence from the date, he takes over the charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity, provided that officiating or temporary service is followed without interruption by substantive appointment.

3.2. He further relied upon the Office memorandum issued by the Department in OM No.20011/2006-Estt.(D) dated 03.03.2008, whereby, clarification was issued to the DoP & T OM No.220117/7/1986-Estt.(D) dated 03.07.1986 and submitted that, as per the above clarification memorandum dated 03.03.2008, when appointments against unfilled vacancies are made in a subsequent year or years either by Direct Recruitment or promotion, the persons so appointed shall not get seniority of any earlier year (viz year of vacancy/panel or year in which recruitment process is initiated), but should get the seniority of the year, in which they are appointed on substantive basis. Further, the Department had settled the entire service and death benefits of the deceased D.Rajasekaran, as per the new scheme to his wife, the second respondent herein and there is no error



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on the part of the Department and hence, the order passed by the Tribunal is liable to set aside.

4. The learned counsel for the second respondent advanced his arguments, justifying the order passed by the Tribunal and he prayed for dismissal of the writ petition.

5. Heard the learned counsel for the petitioners and the learned counsel for the second respondent. Also , we have perused the materials on record.

6. It is an admitted fact that the husband of the second respondent namely, D.Rajasekaran was initially appointed as Extra Departmental packer (now called as Gramin Dak sevak) on 10.08.1973 and subsequently, on seniority basis, he was appointed as postman on 29.01.2004 under direct recruitment quota, for the vacancy arose in the year 2002.



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7. At this juncture, it is worthwhile to extract the relevant paragraph of the memorandum in ***O.M.No.57/05/2021-P & PW(B) dated 03.03.2003***, which is relied upon by both the counsels.

Department of Pension and Pensioners Welfare (DPPW)

O.M.No.57/05/2021-P & PW(B) dated 03.03.2023

...

2. ...

3. Applicability of instructions issued vide aforesaid DPPW OM dated 03.03.203 in the case of GDS appointed to the civil service post (s) through " seniority" has been examined. It is hereby clarified that the benefit of DPPW O.M.No.57/05/2021- P & PW(B) dated 03.03.2023 to GDS appointed to civil service post (s) through Seniority shall be applicable, **if Screening Committee/Selection Committee concerned, for the purpose of recommending appointment of GDS to such civil service post was held prior to 22.12.2003.**

8. In the case on hand, the writ petitioners, in their affidavit itself, at paragraph No.2, stated as follows:

Shri (late) D.Rajasekaran entered into Government Service on his selection as postman on the basis of seniority, vide 5th petitioner memo N.PF/DR/PM dated 28.01.2004, under direct recruitment quota meant for GDS for the vacancy year 2002. He joined the said post on 29.01.2004 at VOC Nagar SO. During those years, it was not possible to fill up the vacancies for Direct Recruitment Quota of a particular year in the same year itself, as the approval of Screening Committee of



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Postal Directorate was needed before initiating recruitment action to fill up vacancies. The vacancies arose in a particular year were to be approved by the Screening Committee under Annual Direct Recruitment Plan for that year. After the vacancies were cleared under ADR Plan, the selection process was carried out. **For the seven vacancies arose in Postman cadre under direct recruitment quota for the year 2002, one vacancy was approved by the Screening Committee under Annual Direct Recruitment Plan and the same was allotted to Thanjavur Division, vide letter no. REP/2-2/2003/ADR dated 13.11.2003. For the said one UR vacancy, the Departmental selection Committee met on 31.12.2003. D.Rajasekaran was selected to the cadre of postman on seniority basis and he joined the said post on 29.01.2004, vide memo dated 28.01.2004."**

9. From the above averments, it is clear that for the seven vacancies arose in the Postman cadre under direct recruitment plan for the year 2002, 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, D.Rajendran, husband of the second respondent was selected by the Selection Committee met on 31.12.2003 and he joined the said post on 29.01.2004. Therefore, the above OM dated 03.03.2023 is squarely applicable to the second respondent's case, where, the Screening Committee had approved the post on 13.11.2003 itself, i.e.



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before the crucial date 22.12.2003 and consequently, her husband was selected by the selection committee on 31.12.2003 and he had joined as postman on 29.01.2004.

10. However, it is vehemently argued by the learned counsel for the petitioners that, the Screening Committee had approved one vacancy post to be filled up under direct recruitment quota and had not specifically approved the above one post for appointing D.Rajasekaran and it is for the selection committee to select the candidate to be filled up in the cadre of postman.

11. The above contentions of the learned counsel for the petitioners has no logic and unacceptable. Because, one vacancy post was approved by the Screening Committee on 13.11.2003 and consequently, the selection committee had selected the husband of the second petitioner on 31.12.2003, i.e. much prior to 01.01.2004, before the commencement of new pension scheme.

12. At this juncture, it is useful to rely upon the decision of a



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Division Bench of this Court in W.P.No.21193/2015, dated 01.03.2017,

wherein, a similar stand has been taken and the relevant paragraph No.10 is extracted hereunder.

10. It emerges from the above decision and other circumstances of the case that the petitioner is entitled to be brought under the CCS (Pension) Rules as existed before 01.02.2004 since admittedly, the selection was initiated much before 01.01.2004 for the vacancy of the year 2002-2003 and selection was made by proceedings dated 30.12.2003. Moreover, admittedly, the petitioner joined as Extra Departmental Packer on 01.01.1974, i.e. nearly 30 years before coming into force of new pension scheme. Therefore, in all fairness, the request of the applicant for treating him as a pensioner under the old scheme ought to have been entertained favourably. Nevertheless, the learned Tribunal, without appreciating the claim of the petitioner in proper perspective with reference to various orders passed by the Tribunal itself as confirmed by the Karnataka High Court and the Hon'ble Supreme Court, has merely dismissed the case only on the ground that the date of the appointment of the petitioner was on 01.01.2004, by which date, the new pension scheme came into effect. Such a rigid approach by the learned Tribunal has taken away valuable right of the petitioner being pensioner of the old pension scheme which existed prior to 01.01.2004. It is not in dispute that the petitioner was already in service as GDS worker for nearly 30 years prior to new pension scheme and he was admittedly selected and appointed in Group D vacancy, which admittedly arose much earlier to 01.01.2004. In such view of the matter, the Tribunal ought to have allowed the Original Application. Therefore, we deem it



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fit to allow the application in O.A.No.310/2014 and grant the relief as sought for by the petitioner."

Therefore, considering the afore decision of the Division Bench and also in view of the discussions made in the earlier paragraphs, we are of the view that the second respondent is entitled to the benefits under old pension scheme, as per the rules and there is no error in the order passed by the Tribunal and hence, the writ petition deserves for dismissal.

13. Accordingly, this writ petition is dismissed and the order passed by the Tribunal in O.A.No.1508/2014, dated 23.08.2016 is confirmed. No cost.

(D.K.K.J.)

(P.B.B.J.)

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