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W.P.No.31984 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2023

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE P. DHANABAL

W.P.No.31984 of 2018

WMP No.37240 of 2018

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

2. Post Master General, Chennai City Region,
Chennai 600 002.

3. The Senior Superintendent of Post Offices,
Pondicherry Division,
Pondicherry 605 001.

... Petitioners

Vs.

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

2. S.Lucas

... Respondents

Prayer: Writ petition filed under Article 226 of Constitution of India to issue a writ of certiorari to call for the records of the first respondent in O.A.No.765/2013, dated 18.04.2017 and quash the same.



W.P.No.31984 of 2018

For petitioners : Dr.G.Babu, Central Government

Standing Counsel

For Respondents : R1 - Tribunal

R2 - No appearance

ORDER

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

This writ petition has been filed, as against the order passed by the Tribunal in O.A.No.765/2013 dated 18.04.2017, in and by which, the *petitioners herein were directed to count the service of the second respondent herein from the date of initial appointment on adhoc basis as a special case and accordingly, grant him pension as per his entitlement and to issue necessary orders, within a period of eight weeks from the date of receipt of the order.*

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

The second respondent herein had filed the above original application before the Tribunal stating that, he was appointed as GDS on 1.8.1979 in the postal Department and he has completed more than 20 years of service



W.P.No.31984 of 2018

as GDS. Subsequently, he was selected to the post of Group D as against a vacant post for orthopedically handicapped category by order dated 28.08.2001 and appointment order was issued on 28.09.2001 and joined duty on the same day at Vikravandi SO as Group-D. Subsequently, he was terminated from service, by order dated 20.03.2002. Subsequently, by order dated 27.06.2002, the second respondent was selected by the Department, vide order dated 27.06.2002 in the post of Group D, against a clear vacancy earmarked for physically challenged person and appointment order dated 28.06.2002 was issued. Thereafter, the second respondent retired from service on attaining the age of superannuation on 31.07.2011. The second respondent had made a representation to the Department to grant pension and it was rejected by order dated 16.08.2012, stating that he had rendered a qualifying service of 9 years and 20 days only. According to the second respondent, he is entitled to count the service rendered by him as Group D from 28.09.2001 to 19.03.2002, which is in officiating /adhoc capacity and on regular basis. Therefore, he filed the original application before the Tribunal to grant minimum pension by taking into account the above period from 28.09.2001 to 19.03.2002 along with his regular service as Group D



W.P.No.31984 of 2018

from 27.06.2002 to 31.07.2011 and also direct the Department to pay arrears of pay with interest at 12% p.a. The above application was allowed by the Tribunal. Challenging the order passed by the Tribunal, the present writ petition has been filed by the Department.

3. The learned counsel for the petitioner/Department submitted that, initially, the second respondent was appointed as GDS only and hence, the service period as GDS cannot be taken as qualifying service. He further submitted that the Tribunal ought not to have allowed the application for the simple reason that the second respondent was terminated from service and re-appointed on contract basis and hence, the earlier service period as Group D, cannot be taken into consideration for pensionary benefits. As such, since the second respondent was appointed in regular service only on 29.06.2002 and retired from service on 31.07.2011, he has not completed the qualifying service of 9 years, 9 months, as per the decision of the Board of Postal Department for granting pensionary benefits.



W.P.No.31984 of 2018

4. The learned Standing Counsel has also brought the notice of this court to the decision of made in W.P.Nos. 10162, 19881 & 6514 of 2015, dated 28.07.2023, wherein 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:-

“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



WEB COPY



W.P.No.31984 of 2018

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:-

(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



WEB COPY



W.P.No.31984 of 2018

(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:

“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.”



W.P.No.31984 of 2018

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.

5. On facts, the 2nd respondent herein has rendered service only 9 years 29 days and he has not completed minimum qualifying service of 9 years 9 months to consider for grant of pensionary benefits as per Rule 49 of CCS (Pension) Rules 1972.

6. In view of the decision of the Division Bench of this Court in W.P.Nos. 10162, 19881 & 6514 of 2015, dated 28.07.2023 cited supra and considering the fact that the 2nd respondent has not completed the qualifying service of 9 years 9 months in the petitioners-department, the impugned order passed by the tribunal in O.A.No. 765/2013, dated 18.04.2017 is liable to be set aside.



W.P.No.31984 of 2018

7. In the result, the order passed by the tribunal in O.A.No.765/2013, dated 18.04.20172 is set aside. The writ petition filed by the department is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

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

15.12.2023

Internet: Yes/No
Index : Yes/No
mst

To

1. The Registrar, Central Administrative Tribunal,
Madras Bench, Chennai-104.
2. The Chief Postmaster General, Union of India,
Tamil Nadu Circle, Anna Salai,
Chennai 600 002.
3. Post Master General, Chennai City Region,
Chennai 600 002.
4. The Senior Superintendent of Post Offices,
Pondicherry Division,
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WEB COPY



W.P.No.31984 of 2018

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