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W.P.No.32283 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2023

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE P. DHANABAL

W.P.No.32283 of 2018 and

WMP No.37522 of 2018

1. Union of India, rep. by its Secretary,
Department of Posts, Ministry of Communications,
Dak Bhawan Sansad Marg,
New Delhi 110 001.
2. The Chief Post Master General,
Tamil Nadu Circle, Anna Salai,
Chennai 600 002.
3. The Post Master General,
Central Region (TN),
Tiruchirappalli 620 001.
4. The Superintendent of Post Offices,
Karur Division, Karur 639 001.

... Petitioners

Vs.

1. The Central Administrative Tribunal,
Rep. by its Registrar, Madras Bench.
Chennai 600 014.



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2. V.Maruthamuthu (deceased)
3. M.Veeramani
4. M.Jeyakumar
5. M.Sivakumar
6. M.Arjunan
7. M.Jeyarman

(Respondents 3 to 7 are substituted to V.Maruthamuthu (deceased),
as his legal heirs, vide order dated 21.12.2023 made in
WMP No.35969/2023 in W.P.No.32283/2018.) ... 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 impugned order dated
09.02.2017 passed in O.A.No.310/1701/2014 on the file of the first
respondent and quash the same.

For petitioners : Mr.A.R.L.Sundaresan, Addl.Solicitor General
for Mr.Venkataswamy

For Respondents : Mr.R.Malaichami,
for respondents 3 to 7
R1- Tribunal

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.310/01701/2014, dated 09.02.2017, in which the prayer



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of the deceased Maruthamuthu " to treat his service under old pension scheme under CCS (Pension) Rules 1972, by treating that he had deemed to be appointed as postman from the year of vacancy i.e. the year 2002, against which he was appointed as Postman, for the purpose of grant of pension and other retirement service benefit to him" was allowed.

2. Originally, this writ petition has been filed by the Department as against the Tribunal and one Maruthamuthu, who approached the Tribunal by filing the above original application. Pending writ petition, he died and hence, on petition, his legal heirs were substituted to him as respondents³² to 7.

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

The deceased Maruthamuthu was initially appointed as ED packer on 01.09.1973 and he became eligible for promotion to the cadre of Postman for the vacancies pertaining to the year 2002. The fourth petitioner, in the year 2004, had constituted a Departmental Promotion Committee (DPC) for considering appointment to the cadre of Postman for the year 2002. However, in the DPC, the 4th petitioner had appointed one S.Pugazhendhi,



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who is junior to him, as postman. It is the contention of the deceased Maruthamuthu that he was promoted as Postman, vide order dated 15.09.2010 for the vacancy of the year 2002 and since he was appointed for the vacancy of the year 2002, he is entitled to get old pension and his representation seeing old pension was rejected by the Department. Hence, he filed the original application before the Tribunal and the same was allowed on 9.2.2017. Assailing the order passed by the Tribunal dated 9.2.2017. the Department has filed the instant writ petition.

4. Heard the learned Additional Solicitor General, appearing for the petitioners and the learned counsel appearing for the respondents 3 to 7.

5. According to the petitioners/Department, the deceased Maruthamuthu was appointed as GDS on 01.09.1973 and he belongs to the SC community. The Departmental Promotion Committee was held on 29.06.2004 and one N.Pugalenthi, who fulfilled the terms and condition under the Unreserved Category and within 50 years of age as on 01.07.2004, was selected as Postman. Since the petitioner belongs to SC community and he crossed the prescribed maximum age limit of 50 years as on 01.07.2004, he was not



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selected to Postman, vacancy earmarked for UR category and his representation was also rejected for the above said reason. Subsequently, as per the order of the Tribunal dated 06.06.2005 in O.A.No.1006/2004, which was confirmed by this Court in W.P.631/2006, filed by the Department, vide order dated 24.01.2008, a review DPC was conducted on 09.07.2009. In the review, the deceased Maruthamuthu was not considered for appointment to the cadre of postman, either on the basis of promotion, or on the basis of direct recruitment, since he was far junior in the seniority list of GDS. But, he was selected as postman w.e.f. 30.09.2010 and accordingly, he was lawfully enrolled under the New Pension Scheme, vide gazette notification dated 10.10.2003. Subsequently, he retired from service on 30.06.2014 on attaining the age of superannuation, thereby he rendered qualifying service of 3 years 9 months and 1 day.

6. According to the petitioner/Department, though the deceased Maruthamuthu was appointed on 01.09.1973, his service as GDS was only a part time work and he was not regular government servant. Further, the GDS are holder of civil posts, but they are outside the regular civil service,



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due to which, their appointment will be direct recruitment, even when selection is on basis of selection-cum-seniority. The GDS cannot said to be feeder cadre of postman/Group-D, in view of the provisions of the Recruitment Rules.

7. Rule 14(2) of CCS (Pension) Rules, 1972, provided that for the purposes of sub rule (1), the expression 'service' means service under the Government and paid by the Government from consolidated fund of India or a local fund administered by the Government, but does not include service in a non-pensionable establishments, unless such service is treated as qualifying service by the Government. Extra Departmental Agents are provided to be specially excluded from the application of pension under the applicable GDS rules and the government has also not provided counting of a part of the service rendered by them in the capacity of EDA/GDS on absorption to regular departmental posts. The deceased Maruthamuthu was appointed as a postman in seniority quota, on 30.09.2010, i.e. after the cut off date of 01.01.2004 and he was not appointed for the vacancy arose in the year 2002. Therefore, his service as GDS cannot be countenanced as qualifying service for pensionary benefits, and hence, he is not entitled for



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getting benefit of regularization w.e.f. 2002. However, the Tribunal, without considering the above aspects, has allowed the application and hence the same is liable to be dismissed.

8. Per contra, it is the contention of the learned counsel for the respondents 3 to 7 that, accepting the contention of the deceased Maruthamuthu, the Tribunal has rightly passed the order to count the service rendered by him as qualified service and to grant pensionary benefits. Therefore, there is no reason to interfere in the order passed by the Tribunal.

9. In such circumstances, it is necessary to note that, this Court has decided the similar issues in W.P.No.2368/2017 dated 20.09.2023, wherein, it is observed as follows.

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.

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

(a) N. Venkatramani vs. Indian Bank and another reported 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 the 2nd respondent would



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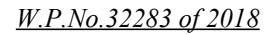
contend that the 2nd respondent was also similarly placed and his name also has been mentioned in the communication dated 22.08.2023 and therefore there was discriminatory action on the part of the petitioners and on this ground also, the 2nd respondent ought to be considered to the benefits of the Old 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.

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



In the light of the decisions cited supra, and also considering the fact that the deceased Maruthamuthu was appointed as a postman in seniority quota, on 30.09.2010, i.e. after the cut off date of 01.01.2004 and he was not appointed for the vacancy arose in the year 2002, his service as GDS cannot be countenanced as qualifying service for pensionary benefits. Therefore, we are of the view that the order passed by the Tribunal is liable to be set aside.

11. Though the request made by the learned counsel for the



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respondents 3 to 7 is genuine, we are not inclined to pass any positive direction. However, it is for the authorities concerned to consider the claim of the respondents 3 to 7 sympathetically, if any such request is made by them and pass appropriate orders.

12. Accordingly, this writ petition is allowed and the impugned order passed by the Tribunal is set aside. No costs. Consequently, connected miscellaneous petition is closed.

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

21.12.2023

Internet: Yes/No
Index : Yes/No
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To

1. The Secretary, Union of India,
Department of Posts, Ministry of Communications,
Dak Bhawan Sansad Marg,
New Delhi 110 001.
2. The Chief Post Master General,
Tamil Nadu Circle, Anna Salai,
Chennai 600 002.
3. The Post Master General,
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4. The Superintendent of Post Offices,
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D.KRISHNAKUMAR, J.

and

P. DHANABAL, J.

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