



WEB COPY



W.P.No.34434 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 07.11.2023

DELIVERED ON: 29.11.2023

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HON'BLE TMT.JUSTICE P.DHANABAL

W.P.No.34434 of 2018
and WMP.No.40007 of 2018

- 1.V.Rattunavel
- 2.A.Adimoolam
- 3.D.J.Saravanan
- 4.M.Jayagandan
- 5.D.Duraiaraj
- 6.R.Selvaraj
- 7.T.Kalessejiane
- 8.M.Sankar
- 9.V.Umapathy
- 10.K.Krishnamoorthy

.. Petitioners

Vs.

- 1.Union of India, represented by the
Government of Puducherry through the
Secretary to Government (PWD),
Chief Secretariat, Puducherry.
- 2.The Chief Engineer,
Public Works Department,
Puducherry.



W.P.No.34434 of 2018

3. The Registrar,
Central Administrative Tribunal,
Madras.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the 3rd respondent in respect of the order passed in O.A.No.310/1735 of 2016 dated 4.9.2018 and to quash the same and consequently, to direct the respondents 1 and 2 to extend the benefit of Old Pension / G.P.F. Scheme to the petitioners.

For Petitioners : M/s.V.Ajayakumar

For Respondents : M/s.R.Syed Mustafa

Special Government Pleader for R1 & R2

ORDER

D.KRISHNAKUMAR, J.

The writ petition has been filed challenging the order of the Central Administrative Tribunal, Chennai dated 04.09.2018 made in O.A.No.310/1735 of 2016, in and by which the original application filed by the petitioners/applicants seeking to implement the benefit of Old Pension Scheme by taking into consideration the services rendered by them as N.M.Rs., prior to the date of regularization of their services, came to be dismissed by the Tribunal.



W.P.No.34434 of 2018

WEB COPY

2. The writ petitioners were appointed as Non Muster Roll (NMR) Casual Labourers with effect from the dates ranging from December 1996 to July 1998. They were regularized with effect from 09.08.2006. The petitioners made a representation for counting of 50% of services rendered by them as NMRs for the purpose of granting pension under CCS (Pension) Rules, 1972. However, the respondents rejected the petitioners request on the ground that they were regularized only with effect from 09.08.2006. Therefore, the petitioners filed Original Application before the Tribunal seeking the benefit of Old Pension Scheme by taking into account the services rendered by them as NMRs prior to the date of regularization of their service. The Tribunal has dismissed the original application filed by the petitioners, against which the present writ petition has been filed.

3. Mr.V.Ajayakumar, learned counsel for the petitioners submitted that the petitioners were working as NMRS from the year 1996 to 1998 onwards till the date of regularization and as per the rules regarding granting of temporary status, the Daily Rated employees are entitled to get temporary status on completion of one year of service and so the



W.P.No.34434 of 2018

WEB COPY

petitioners ought to have been granted temporary status after completion of one year service and for the lapse on the part of the respondents in conferment of temporary status, the applicants/petitioners cannot be deprived of the benefit of Old Pension Scheme and the Tribunal has failed to take into consideration the aforesaid aspects as well as the order relied on by the petitioners in respect of similar matter in W.P.No.5102 of 2011 dated 27.04.2011 and therefore, prays for setting aside the order of the Tribunal.

4. Heard Mr.S.Syed Mustafa, learned Special Government Pleader appearing for the respondents 1 and 2 and also perused the materials on record.

5. The undisputed fact remains that the petitioners originally joined the services as NMRs in the Public Works Department, Puducherry during the years 1996 and to 1998 and they were granted temporary status on 30.01.2004 and their services were regularized with effect from 09.08.2006, vide order dated 02.08.2006. It is the grievance of the petitioners that they are entitled to the benefit of temporary status with



W.P.No.34434 of 2018

effect from the date on which they completed one year of service and due to the lapse and delay on the part of the respondents, they were granted temporary status only in the year 2004, as a result of which they were deprived of the benefit of Old Pension Scheme.

6. In the case on hand, the petitioners served as NMRs from 1998 till they were conferred with temporary status, vide order dated 30.01.2004. Admittedly, the petitioners did not make any challenge to the order dated 30.01.2004 for the belated grant of temporary status. They were brought into regular service with effect from 09.08.2006. Even for the sake of arguments if the contention of the petitioners are accepted by counting 50% of their temporary service as NMR, the petitioners still would not satisfy the minimum qualifying service for granting pension as per the Old Pension Scheme.

7. This Court (in which one of us is a part of that Division Bench) had an occasion to deal with a similar matter 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,



W.P.No.34434 of 2018

Ministry of Communications, Department of Posts (Pension Section), New Delhi and accepting the contention of the respondent-department therein, had 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 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



W.P.No.34434 of 2018

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



W.P.No.34434 of 2018

WEB COPY

Director General (Pension), Department of Posts (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



WEB COPY



W.P.No.34434 of 2018

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.”

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.”

8. The aforesaid Division Bench decision of this Court squarely applies to the facts of the present case. It is seen that the petitioners on being regularized on 09.08.2006 do not have the requisite minimum qualifying service of 10 years for being entitled to pension under Rule 49 of CCS (Pension) Rules, 1972 read with Rule 14, which governs the minimum qualifying service for pension. Rule 88 of CCS(Pension)Rules, 1972 provides for power to relax where any Ministry of department of



W.P.No.34434 of 2018

WEB COPY

Government is satisfied that the operation of any of these rules causes undue hardship in any particular case. Admittedly in the case on hand, no such relaxation was granted under Rule 88 of CCS(Pension) Rules, 1972. In the light of the aforesaid Division Bench decision of this Court, we find no reason to interfere with the order of the Tribunal and find no merit in this writ petition.

9. The Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is dismissed.

[D.K.K., J.] [P.D.B., J.]
29.11.2023

Index:yes/no

Internet:yes

Jvm

To

1.The Secretary to Government (PWD),
Union of India, Government of Puducherry,
Chief Secretariat, Puducherry.

2.The Chief Engineer,
Public Works Department, Puducherry.

3.The Registrar,
Central Administrative Tribunal,
Madras.



WEB COPY



W.P.No.34434 of 2018



WEB COPY



W.P.No.34434 of 2018

**D.KRISHNAKUMAR, J.,
&
P.DHANABAL, J.**

Jvm

**Order in
W.P.No.34434 of 2018**

29.11.2023