



W.P.(MD) No.19613 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.10.2023

CORAM:

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN**

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Esakkimuthu

... Petitioner

-VS-

1.The Senior Superintendent of Post Offices
Viruthunagar Division
Viruthunagar-626 001

2.The Chief Post Master General
Tamilnadu Circle, Chennai-2

3.The Registrar
Central Administrative Tribunal
Madras Bench, Chennai

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus to call for the records relating to the order dated 19.07.2016, passed in Original application No.1108 of 2014, before the Central Administrative Tribunal, Madras Bench, the third respondent herein and quash the same and consequently directing the respondents to sanction



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pension and to pay the arrears of pension payable to the petitioner taking into account the entire period of his service from 30.12.1972 to 30.09.2000.

For Petitioner : Mr.V.Kannan

For Respondents : Mr.D.Saravanan for R1 & R2
No appearance for R3

ORDER

[Order of the Court was made by S.M.SUBRAMANIAM, J.]

This writ petition has been instituted challenging the order dated 19.07.2016, passed by the Central Administrative Tribunal, Madras Bench, in O.A.No.1108 of 2014.

2. The petitioner was initially appointed as Extra Department Packer (EDP) at Sivakasi Coronation Colony Sub Post Office from 30.12.1972. He served as such upto 12.12.1993. Thereafter, he was absorbed / appointed as Ground-D employee and posted in Sayalkudi Sub Post Office on regular basis on 13.12.1993. He was allowed to retire from service on 30.09.2000. The claim of the petitioner is that he served as Extra Department Packer for 20 years 11 months and 14 days continuously and served as regular employee for 6 years nine months and 19 days and therefore, the period of temporary



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service rendered by him in the post of Extra Department Packer is to be reckoned for the purpose of calculating the qualifying period of service for grant pension under the Central Pension Rules.

3. Learned counsel for the petitioner mainly contended that several such similarly placed persons were granted the benefit of counting 50% of the period of temporary service rendered in the post of Extra Department Packer and therefore, the petitioner is also entitled for the similar benefit.

4. The Judgment of the Division Bench of this Court dated 06.06.2018 in W.P.(MD) No.10677 of 2016 **[P.Subbiah vs. The Superintendent of Post, Department of Posts India, Tirunelveli District, Tirunelveli and others]** is relied upon by the petitioner with reference to the Office Memorandum issued in the year 1991. The relevant portion of the said Judgment, which refers to the Office Memorandum of the year 1991, is as follows:

“5.The issues raised in this O.A. are similar to the issues raised in O.A.No.1264/2001. It is pertinent to quote the findings of this Tribunal in its order dated 18.04.2002, which is as under:



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“Here, we would like to invite a reference to the OM dated 12.04.1991 issued by the DOPT with regard to regularization of casual labourers are concerned. In the said scheme, there is a clause stating that 50% of the service rendered as temporary status employee will be reckoned as a qualifying service for regulating the retiral benefits, after regularization against Gr. D posts. This provision is on similar lines prevailing in the Railways and other Govt. of India departments. In a nutshell, the essence is that even in respect of casual labourers who got regularized at a subsequent date against regular Gr. D posts, a portion of their service rendered with temporary status is reckoned as qualifying service for regulating the retiral benefits.

5. However, we find that the above cited Judgment is relating to the full time temporary employee. But, the petitioner in the present writ petition was working as a part time Extra Department Packer and therefore, the said Judgment is of no avail to the petitioner.



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6. In the impugned order, the Central Administrative Tribunal has also made a finding that the petitioner being only a part time employee worked for few hours per day and therefore, he was not a full time temporary employee.

7. That apart, in respect of the part time Extra Department Packer employees, the Honourable Supreme Court, in the case of ***Union of India and others vs. The Registrar and another***, by order dated 24.11.2015 in Civil Appeal Nos.13675-13676 of 2015, has considered the issues and the relevant portion of the said order reads as follows:

7. The appellant-Union of India has filed an additional affidavit on 26.10.2015 stating inter alia that the Extra Departmental Agents covered by the DOP&T Circular, 1991, are full time casual employees, whereas the second respondent is a part time casual employee and under the Rules governing his service framed in the year 1964 and amended in the years 2001 and 2011, employees like the respondent no. 2 are required to render between three to five hours of service every day. At the time of their appointment they are required to give an undertaking to the effect that they have alternative source of income to support their families. The need for appointment of such employees, according to the Union of India, is to reach out



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to the addresses in far flung villages in the country where establishment and maintenance of a regular post office is not a viable proposition. Attention is also drawn to the provisions of the aforesaid Rules to the effect that such employees are not entitled to pension but would be entitled to ex-gratia gratuity and such of the payments as may be decided by the Government from time to time.

8. Considering the fact that the DOP&T Circular, 1991, which form the basis of the impugned direction of the learned Tribunal as affirmed by the High Court, pertained to full time causal employees to which category the second respondent does not belong and the provisions of the Rules governing the conditions of service of the respondent as noted above, we are of the view that the impugned directions ought not to have been passed by the learned Tribunal and approved by the High Court. The matter pertains to policy and involves financial implications. That apart, in view of the facts placed before us, as noted above, we deem it proper to interfere with the impugned directions and allow these appeals filed by the Union of India. We, however, make it clear that the pension granted to the second respondent will not be affected by this order and the said respondent will continue to enjoy the benefit of pension in accordance with the provisions of law.



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8. The above ratio laid down by the Apex Court is squarely applicable to the facts of the present case. More so, the Central Pension Rules is the guiding principles, which are to be followed for the purpose of grant of pension to the Central Government employees.

9. Therefore, in view of the fact that the Apex Court has already considered the issues and held that the part time Extra Department Packer (EDP) employees are not entitled to the benefit of counting their temporary service period for grant of pension, we do not find any infirmity in respect of the impugned order passed by the Central Administrative Tribunal.

10. Accordingly, the writ petition is dismissed. No costs.

[S.M.S., J.]

[V.L.N., J.]

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NCC : Yes / No

Index : Yes / No

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