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W.P.No.2578 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

W.P.No.2578 of 2018

Union of India,
Rep by Senior Superintendent of Post offices,
Chennai City Central Division,
Chennai – 600 017.

... Petitioner

Vs.

1.The Registrar,
The Central Administrative Tribunal,
Madras bench, Chennai – 600 104.

2.R.Krishnaveni

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari, calling for the records of the first respondent and quash the order passed by the first respondent in O.A.No.310/01040/2015 vide Order dated 09.09.2016.

For Petitioner : Mr.Ar.L.Sundaresan,
Additional Solicitor General of India
asst. by Mr.K.S.Jeyaganeshan,

For Respondents : Mr.R.Malaichamy (for R2)
Tribunal (R1)



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ORDER

(Order of the Court was made by *S.M.SUBRAMANIAM, J.*)

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Under assail is the order dated 09.09.2016 passed in O.A.No.1040 of 2015.

2. The Union of India is the petitioner before this Court. The 2nd respondent filed Original Application seeking relief to direct the Writ Petitioner Department to count the officiating service rendered by the 2nd respondent in the cadre of Group-D and take into account of year of vacancy, against which the 2nd respondent was promoted to the cadre of Group-D for grant of pension under old pension scheme to the 2nd respondent and to direct the Department to pay arrears of retirement service benefits to the 2nd respondent.

3. It is not in dispute that the New Pension Scheme (NPS) was implemented by the Government of India with effect from 01.01.2004. The 2nd respondent was initially engaged as Gramin Dak Sevak (GDS) in the Postal Department. She was engaged for hourly pay and on need basis. There is no sanctioned post of Gramin Dak Sevak in the Postal Department.

4. Service Rules for Postal Gramin Dak Sevak provides terms and conditions of engagement. The terms and conditions reads as under,



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3-A. Terms and Conditions of Engagement

(1) A Sevak shall not be required to perform duty beyond a maximum period of 5 hours in a day;

(ii) A Sevak shall not be retained beyond 65 years of age;

(iii) A Sevak shall have to give an undertaking that he has other sources of income besides the allowances paid or to be paid by the Government for adequate means of livelihood for himself and his family;

(iv) A Sevak can be transferred from one post / unit to another post/ unit in public interest;

(v) A Sevak shall be outside the Civil Service of the Union;

(vi) A Sevak shall not claim to be at par with the Central Govern- ment employees;

(vii) Residence in post village/delivery jurisdiction of the Post Office within one month after selection but before engagement shall be mandatory for a Sevak;

Failure to reside in place of duty for GDS BPM and



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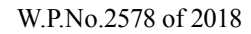
within delivery jurisdiction of the Post Office for other categories of Gramin Dak Sevaks after engagement shall be treated as violative of conditions of engagement and liable for disciplinary action under Rule 10 of the Conduct Rules, requiring removal/dismissal;

(viii) Post Office shall be located in the accommodation to be provided by Gramin Dak Sevak Branch Postmaster suitable for use as Post Office premises;

(ix) Combination of duties of a Sevak shall be permissible;

5. As per the above terms and conditions of Engagement, GDS are not civil servants. They perform duties on hourly basis. They are engaged on need basis by the Postal Department. Therefore, they are not entitled to claim service benefits on par with the other Government servants working as regular employees.

6. Gramin Dak Sevak continuing as such for considerable length of time, are considered for permanent absorption in the sanctioned post in the time scale of pay. This concession was extended taking note of the fact that they have experience in the Postal Department and further, their services on regular basis



would be of more helpful to the Postal Department. They are absorbed against the regular vacancy on the basis of eligibility and length of service.

7. The 2nd respondent was absorbed on regular basis as Multi Tasking Staff (MTS) in the Postal Department on 11.04.2005. He served 10 years 2 months and 19 days as regular employee in the time scale of pay and retired from service on 30.06.2015 on attaining the age of superannuation.

8. The Original Application before the Tribunal was filed to count the officiating services rendered by the 2nd respondent in the post of Gramin Dak Sevak.

9. Mr.AR.L.Sundaresan, the learned Additional Solicitor General of India would submit that the Gramin Dak Sevaks are not entitled for counting of the services rendered as hourly basis employees and their service will be reckoned for pension purposes only from the date on which they are regularly absorbed in the post of Multi Tasking Staff and the 2nd respondent in the present case, was admittedly appointed as such on 11.04.2005. Thus, she will fall under the New Pension Scheme (NPS), since she was appointed after 01.01.2004. Therefore, counting of earlier service would not arise at all.



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10. Mr.R.Malaichamy, learned counsel for the 2nd respondent would oppose by stating that vacancies were available during the relevant point of time and there was an administrative delay in absorbing these Gramin Dak Sevak in a regular sanctioned vacancies. Therefore, the officiating services rendered by the 2nd respondent during the existence of the vacancies is to be considered as regular services for counting of qualified services.

11. The proposition mooted out by the learned counsel for the 2nd respondent is running counter to the nature and conditions of appointment of the 2nd respondent. The appointment of Gramin Dak Sevak is governed under the Service Rules for postal Gramin Dak Sevak and accordingly, they are engaged on hourly basis and they are not construed as civil servants. Only when they are absorbed as Multi Tasking Staff on regular basis in a sanctioned post in the time scale of pay, they are brought under the regular establishment and such services alone would be taken into consideration for reckoning the qualifying services and for grant of pension and other monetary benefits.

12. In the present case, the 2nd respondent admittedly was appointed in a sanctioned post as a regular employee on 11.04.2005 after implementation



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of the New Pension Scheme on 01.01.2004. Therefore, she is eligible to avail the pension benefits under the New Pension Scheme, which is not disputed by the Petitioner/Department. This issue has been considered and the Appeal filed by the Union of India was allowed by the Division Bench of this Court in the case of *Union of India and Others Vs. The Registrar, Central Administrative Tribunal* in W.P.No.1594 of 2022 dated 15.11.2023.

16. For all the above reasons, we find force in the contention raised on behalf of the petitioner. Accordingly, the impugned order in O.A.No.1040 of 2015 dated 09.09.2016 is set aside and the present Writ Petition is allowed. No costs. Consequently, the connected Miscellaneous Petitions, if any, are closed.

[S.M.S., J.]

[M.J.R., J.]

25.11.2024

Index: Yes/No

Speaking/Non-speaking order

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To

The Registrar,
The Central Administrative Tribunal,
Madras bench, Chennai – 600 104.



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S.M.SUBRAMANIAM, J.
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