



W.P.No.17391 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.11.2023

DELIVERED ON : 02.02.2024

CORAM :

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR**

**and**

**THE HONOURABLE MR.JUSTICE P. DHANABAL**

**W.P.No.17391 of 2020 and**

**WMP Nos.21560 and 21561 of 2020**

R.Ramachandran

... Petitioner

Vs.

1. The Union of India,  
Rep. by the Director General of Posts,  
Dak Bhawan, New Delhi.
2. The Chief Postmaster General,  
Tamilnadu Circle, Chennai 600 002.
3. Postmaster General, Southern Region,  
Madurai 625 002.
4. The Superintendent of Post Office,  
Madurai Division, Madurai 625 002.



W.P.No.17391 of 2020

5. The Inspector of Post, Arasarady Post Office,  
Arasarady Post Office, Arasarady, Madurai 625 016.

6. The Registrar, Central Administrative Tribunal,  
Madras Bench, 2 floor, Family Court Building,  
High Court Campus, Chennai 600 001.

.. Respondents

Prayer: Writ petition filed under Article 226 of Constitution of India to issue a writ of certiorarified mandamus to call for the records connected with the order passed in O.A.No.310/01852/2016, dated 13.06.2019 passed by the 6<sup>th</sup> respondent and quash the same and consequently, direct the respondents 1 to 5 to include the name of the petitioner in the dovetailed list maintained by the fourth respondent and absorb the petitioner in the existing and future vacancies in the post of GDS in Madurai Division.

For petitioner : Mr.S.Ilamvaludhi

For Respondents : Mr.Venkatasamy Babu,CGSC-R1 to R5  
R6 - Tribunal

### ORDER

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

Challenging the order passed by the Tribunal in O.A.No.1852/2016, dated 13.06.2019, the present writ petition is filed.



W.P.No.17391 of 2020

WEB COPY

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

The petitioner initially joined the Postal Department as casual labour as ED, now referred to as Gamin Doc Sevak (GDS), on 29.03.1990, continuing until 01.09.1993, completing a continuous period of 240 days within 24 months. Having since completed 25 years of service, the petitioner remains in the same post. The respondents/Department had framed a scheme to include the name of the ED outsiders, who are engaged prior to 11.02.1998 and who had put in service for more than 240 days, either prior to 11.02.1998 or after 11.02.1998, to absorb them in the future vacancies. Despite the petitioner being engaged as a GDS outsider after 11.02.1998, and consistently served as a GDS for over 25 years, the name of the petitioner was not included. But the similarly placed persons who joined as GDS after 11.02.1998 were granted benefit based on the favourable orders obtained from the Tribunal and the Hon'ble Supreme Court, leading to a circular issued by the Department to include those engaged before 01.09.1993. The petitioner sought inclusion in this list for absorption into



W.P.No.17391 of 2020

present or future vacancies and regularization of service, yet the Department overlooked this, opting for direct recruitment from the open market. Consequently, the petitioner's original application before the Tribunal was dismissed on the grounds of delay and laches, prompting the filing of this writ petition against the Tribunal's decision.

3. The learned counsel for the petitioner submitted that as per the proceedings issued by the first respondent, dated 07.05.2015, concession was given to the GDS staff, who were engaged prior to 01.09.1993, to include their name in the list and hence the petitioner is also entitled to the said benefit. The learned counsel has further submitted that, when the similarly placed persons were given benefit and their services were regularized, denying the same benefit to the petitioner herein by the tribunal is not proper. Therefore, the impugned order passed by the Tribunal is liable to be set aside and appropriate orders may be issued to the Department to absorb the petitioner in the existing and future vacancies in the post of GDS.



W.P.No.17391 of 2020

4. The learned counsel for the respondents submitted that, the petitioner was not selected to the post of Gramin Dak Sevak on regular basis or as casual labourer and he was substituted only as outsider in the leave vacancies/vacant post, purely on temporary basis. For selection of GDS, educational qualification is the only criteria, who should passed X Std., with high score and hence the request of the petitioner, citing his long experience in the department, cannot be taken into consideration. The circular No.17-15/2015-GDS, dated 7.5.2015, referred by the petitioner is with regard to give preference to casual labourers in selection process for engagement to all approved categories of GDS and not for inclusion in the dovetailed list, as stated by the petitioner. Since the petitioner was permitted to work under stop-gap arrangements in the Gramin Dak Sevak posts in the leave vacancies of the regular incumbents, the above said circular will not applicable to the petitioner and he had misinterpreted the contents of the above circular. The appointment of of GDS is governed by separate set of rules and the appointment of persons without observing recruitment formalities is considered as back door entry, which is against the constitutional provisions. Therefore, the Tribunal, by considering all the aspects and also following the



W.P.No.17391 of 2020

decision of the Hon'ble Supreme Court, has rightly dismissed the original application. As such, the writ petition is liable to be dismissed.

5. Heard Mr.S. Iamvaludhi, learned counsel for the petitioner and Mr.Vekatasamy Babu, learned Central Government Standing Counsel appearing for the respondents 1 to 5 and perused the records.

6. The contention of the petitioner is that he joined as casual labour and as ED outsider in Madurai Southern Region on 29.03.1990 and he worked in the same post upto 01.09.1993 and completed 240 days in a continuous period of 24 months. Therefore as per the scheme framed by the 3<sup>rd</sup> respondent, the petitioner who engaged after 11.02.1988 has to be included in the dovetailed list and absorb the petitioner in the existing and future vacancies on par with similarly placed persons. But he was denied the said benefit and engaged him as ED outsider for more than 25 years.

7. The petitioner has strongly relied upon the scheme framed by the department dated 23.12.1993 with regard to the appointment of ED posts to



W.P.No.17391 of 2020

the casual labourers and ED outsiders working the department. The relevant portion is extracted hereunder;

*“ED outsiders whose services have been engaged before 11.02.1988 only will be eligible for inclusion in the dovetailed list. They should have completed 240 days of service in any two years prior to 11.02.1988 or after 11.02.1988. Candidates initially engaged in service after 11.02.1988 are not eligible for regularisation even if they completed 240 days of service in any two years after their engagement.”*

8. Admittedly, the petitioner was engaged from the year 1990 i.e after the cut off date 11.02.1988 and did not complete 240 days of service in two years. Hence the petitioner will not come under zone of consideration for inclusion into the dovetailed list prepared by the department as per the above scheme relied by the petitioner. The respondents in their counter affidavit in paragraphs no. 9 & 10 has categorically stated with regard to the eligibility and conditions for engagement to GDS posts. It is stated that all recruitment to the GDS posts have to be made as per rules of GDS (Conduct & Engagement) Rules, 2011 which may revise from time to time.

9. With regard to the other contention of the petitioner to consider him



W.P.No.17391 of 2020

on par with the similarly placed persons, the respondent-department has admitted in the counter statement that some outsiders who were engaged after 11.02.1988 had filed O.A.No. 216 of 2002 & batch cases before the tribunal and the same was allowed in the year 2002 to 2004. Aggrieved over this, the writ petition filed by the department in W.P.No.5026 of 2003 and batch was dismissed. Subsequently, the SLP filed by the department before the Hon'ble Supreme Court was also dismissed on default vide order dated 19.02.2015. Hence the respondent-department was forced to consider the cases of the petitioners in O.A.No. 216 of 2002 as one time measure for absorption against Gramin Dak Sevak Posts.

10. In view of the above it is clear that the benefits were granted to the similarly placed GDS workers as one time measure and no other employees were granted such benefit based on the above order. The petitioner had approached the tribunal in the year 2016 seeking similar benefits after a delay of 14 years of the order passed by the tribunal in O.A.No. 216 of 2002, dated 20.11.2002. The Hon'ble Supreme Court and this Court time and again made several judgments with regard to the non applicability of cases of employees who approached the Court as



W.P.No.17391 of 2020

fence sitters with delay and latches. This Court in a recent judgement in

W.P.Nos.27213 of 2021 & etc batch, dated 21.09.2023\_by relying upon the

various decision of the Hon'ble Supreme Court negated the cases of the

employees who claimed the benefits as fence sitters with delay and latches.

The relevant portion of the judgment is extracted hereunder:

“ 11. That apart, the respondents/applicants having chose to remain silent for many years, they are estopped from raising such claims at a belated stage, based on the orders granted in favour of similarly placed persons. In this regard, it is useful to refer to the decision of the Division Bench of Delhi High Court in **Arjun Lal Makhija v. Government of N.C.T. Of Delhi and Others [W.P.(C) No.8931 of 2014 dated 07.04.2015]**, wherein the Division Bench of Delhi High Court has considered the various decisions of the Hon'ble Apex Court, including the judgment in **State of U.P. & Ors. V.Arvind Kumar Srivatsava & Ors [(2015) 1 SCC 347]**, relied on by the learned Assistant Solicitor General and the same is extracted hereunder:

“In **State of U.P. & Ors. V.Arvind Kumar Srivatsava & Ors [(2015) 1 SCC 347]**, the Apex Court took a view that it is a normal rule that when a particular set of employees is given relief by the Court, all other identically situated persons should be treated alike by extending the same benefit since not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. While laying down this principle, the Court further observed that this normal rule is subject to well-recognized exceptions in the form of laches and delays as well as



WEB COPY



W.P.No.17391 of 2020

acquiescence which would be a valid ground to dismiss their claim but such an exception could not be applied to those cases where the judgment pronounced by the Court was judgment in rem with intention to bestow benefit on all similarly situated persons irrespective of the fact whether such persons had approached the Court or not. Relevant paras of the said judgment wherein these legal principles have been culled out are reproduced as under:-

"Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

***However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim. (emphasis supplied).***

The proposition laid down in the aforesaid decisions squarely applies to the fact of the instant case.



WEB COPY



W.P.No.17391 of 2020

12. The respondents/applicants having remained silent for several years i.e., from the date of their absorption as Lower Division Clerks, cannot seek the relief of absorption from the date of their initial appointment as Estate Clerks, based on the relief granted in respect of similarly placed persons by relying upon the order of the Apex Court in C.A.No.5677/1994 dated 27.08.1999, that too after they attained the age of superannuation between the years 2010 to 2014. The respondents / applicants, being fence sitters, are estopped from raising questions on the validity of the Scheme or lacuna in the scheme at a belated stage, that too after obtaining all retiral benefits and therefore, their claim is liable to be dismissed on the ground of delay and laches in the light of the aforesaid decisions of the Hon'ble Supreme Court. This Court finds force in the contentions put forth by the learned Assistant Solicitor General appearing for the appellants.

13. The Tribunal has failed to consider the factual aspects in a proper perspective and simply relied upon the order passed by the Apex Court in respect of similarly placed persons and passed the impugned order, which in the considered opinion of this Court, warrants interference.

14. In the light of the reasons assigned above, the Writ Petition stands allowed and the order of the Central Administrative Tribunal, Madras Bench in O.A.Nos.730, 727, 728, 731, 725, 726, 729 of 2018 dated 01.04.2021 are set aside. No costs. Consequently, connected miscellaneous petitions are closed.”



W.P.No.17391 of 2020

11. In the instant case, the petitioner having remained silent for 14 years i.e., from the date of order of the tribunal in O.A. No. 216 of 2002, dated 20.11.2002 wherein the directions were issued for absorption as Lower Division Clerks for the employees who were engaged after 11.02.1988, cannot claim the same benefit of absorption and regularisation of service in the GDS post on par with the said employees. The petitioner herein, being fence sitter, is estopped from claiming benefit at a belated stage, his claim is liable to be dismissed on the ground of delay and laches in the light of the decisions of the Hon'ble Supreme Court and this Court cited supra. This Court finds force in the contentions put forth by the learned Senior Panel Counsel appearing for the respondent-department.

12. The Tribunal has considered the above factual aspects in a proper and perspective manner and rejected the claim made by the petitioner and passed the impugned order, which in the considered opinion of this Court, is valid and does not require any interference by this Court.



W.P.No.17391 of 2020

**WEB COPY** 13. In fine the writ petition is dismissed. No costs. Consequently, connected Miscellaneous Petition are closed.

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

**02 .02.2024**

Internet: Yes/No  
Index : Yes/No  
ak/mst

To

1. The Registrar, Central Administrative Tribunal,  
II Floor, Family Court Building,  
High Court Campus, Chennai 600 104.
2. The Director General of Posts,  
Union of India, Dak Bhawan, New Delhi.
3. The Chief Postmaster General,  
Tamilnadu Circle, Chennai 600 002.
4. Postmaster General, Southern Region,  
Madurai 625 002.
5. The Superintendent of Post Office,  
Madurai Division, Madurai 625 002.
6. The Inspector of Post, Arasarady Post Office,  
Arasarady Post Office, Arasarady,  
Madurai 625 016.

*Page 13 of 14*



WEB COPY



W.P.No.17391 of 2020

**D.KRISHNAKUMAR, J.**

and

**P. DHANABAL, J.**

ak/mst

**Pre-delivery order in**

**W.P.No.17391 of 2020**

**02.02.2024**