



Writ Petition No.28804 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON
21.06.2024

PRONOUNCED ON
11.07.2024

CORAM

**THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

**Writ Petition No.28804 of 2023
and W.M.P.No.28407 of 2023**

1.The Chief General Manager, Telecom,
Chennai Telephones, BSNL, 89, Miller's Road,
Chennai – 600 010.

2.The Divisional Engineer (External), BSNL,
Mambalam Division, No.652, Anna Salai,
Nandanam, Chennai – 600 035.

... Petitioners

Vs

1.The Registrar,
Central Administrative Tribunal,
Chennai Bench,
Chennai.

2.M.George Francis,
No.4/55, Thiruvalluvar Street,
Mettupalayam Market, West Saidapaet,
Chennai – 600 033.

... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India
praying for issuance of Writ of Certiorari, to call for the records of the order



Writ Petition No.28804 of 2023

dated 07.03.2023 made in O.A.No.1422 of 2016 on the file of the Central Administrative Tribunal, Chennai Bench and quash the same and to pass such further order.

For Petitioner : Mr.S.Gopinathan
Standing Counsel

For R1 : Tribunal
For R2 : Mr.S.T.Varadharajulu

ORDER

(Order of the Court was made by Mr.K.KUMARESH BABU.,J.)

This Writ Petition had been filed challenging the order of the Tribunal, wherein, the Tribunal had directed the petitioners to regularise the services of the second respondent for Group-D post as a Telecom-Mechanic and fix seniority on par with the employees who were sent for training along with the petitioner and permitting him to complete the left over training of 70 days.

2. Heard Mr.S.Gopinathan, learned Standing Counsel for the petitioner and Mr.S.T.Varadharajulu, learned counsel appearing on behalf of the second respondent.



Writ Petition No.28804 of 2023

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3. The case of the Writ Petitioners is that the second respondent was originally engaged as a casual labour in the year 1984 and was granted TSM in the year 1989. He had been a habitual absentee from the duty and due to shortage of attendance, he had also not been bestowed with the increments and bonus. The second respondent was permitted to appear in the screening test and was also deputed to pre-appointment training programme to the post of Telecom Mechanic from 25.09.2000 to 07.11.2000. The appellant again absented himself for 4 days during the theoretical training and had also not reported to practical training for the period from 01.11.2000 to 15.11.2000. Since, he had not completed the mandated training, he became disentitled to the post of Telecom Mechanic and he was reverted to the parent status of TSM. The second respondent's services were also sought to be discharged for the alleged misconduct of absenting himself from duty without prior notice and was also discharged from service. The said order came to be set aside by the Tribunal in the precursory litigation on the ground of violation of principles of natural justice and was directed to be reinstated in the previous post which is TSM and was also held to be entitled to backwages and other attendant benefits. The said order was also



Writ Petition No.28804 of 2023

confirmed by this Court. He would further contend that the Recruitment

Rules were amended in the year 2012 where only through competitive

examination, the post of Telecom-Mechanic were sought to be filled up.

However, the Tribunal without considering these facts had passed the order

directing the appellants to regularise the services of the second respondent in

Group-D post as Telecom-Mechanic and also to refix his seniority on par

with the employees who were similarly sent to training on 25.09.2000. He

would submit that the direction issued by the Tribunal in the earlier round of

litigation was confirmed by this Court, as to only reinstate the second

respondent in the previous post which would only mean the TSM post held

by the second respondent and not the Group-D post. He would contend that

eventhough, the second respondent was sent for training to the post of

Telecom-Mechanic, he had not been appointed in the post as he had not

completed the mandatory training. Since, he had not been appointed as

Telecom-Mechanic, his reinstatement will be made only in the cadre of TSM

with all monetary and attendant benefits as directed by the Tribunal.

Therefore, the order of the Tribunal to regularise his service as Telecom-

Mechanic is wholly erroneous. Further, he would submit that when the



Writ Petition No.28804 of 2023

Tribunal has found that he had not completed the mandatory training at that point of time cannot have directed the petitioners to regularise the services of the second respondent in the post of Telecom-Mechanic. Therefore, he would seek interference with the order passed by the Tribunal.

4. Countering his arguments, Mr.S.T.Varadharajulu, learned counsel appearing on behalf of the second respondent would vehemently contend that it is only due to the ill health at that point of time of both his wife and himself, he was not able to complete the mandatory training which cannot be put against him. He would further submit that had the petitioners not terminated the services of the second respondent, he would have completed his training at that relevant point of time and therefore, the amendment to the Recruitment Rules cannot be put against him. Further, he had already been selected to the post of Telecom-Mechanic subject to completion of mandatory training and once the training is imparted to the second respondent, he would be entitled to be formally given the post of Telecom-Mechanic. Therefore, there is no infirmity in the order passed by the Tribunal which warrants interference of this Court. Hence, he would seek



Writ Petition No.28804 of 2023

this Court to dismiss the Writ Petition.

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5. We have considered the rival submissions made by the learned counsels appearing on either side and perused the materials available on record before this Court.

6. It is an admitted case that the second respondent had been recruited as a casual labourer and thereafter, he had been granted temporary status of Mazdoor. It is also an admitted case that the second respondent had been nominated for a training for the post of Telecom-Mechanic. It is also an admitted case that the second respondent had not completed his training. The order of the Assistant General Manager dated 20.09.2000 under which the second respondent was nominated had clearly indicated that the training will not confer any right for appointment and that their appointment as Telecom-Mechanic was subject to the availability of vacancies on completion of training. It also clearly states that if the vacancies are not available, the respective TSM will be posted back to their parent cadre. The order also further indicates that failure to report to the training class will



Writ Petition No.28804 of 2023

entitle the TSMs being removed from selection list. The relevant paragraph of the said order, dated 20.09.2000 is extracted hereunder:-

“Failure to report to the training class on the specific date will entitle the officials/ TSMs being removed from the select list. No request for postponement of training will be entertained under an circumstances.

Their training as Telecom Mechanic will not confer any right for appointment as Telecom Mechanic. Their case for appointment to the Telecom Mechanic cadre is subject to the availability of vacancies. On completion of training, if vacancies are not available the officials/ TSM will be post back to their parent cadre.”

For non-completion of training and for the reasons that the prescribed limit of leave had exceeded as per the norms, the second respondent had been discharged from service. He had raised an Industrial Dispute in I.D.No.53 of 2003, wherein the order of discharge was set aside with a specific direction to reinstate the second respondent in his previous post. For better appreciation, the relevant paragraph is extracted hereunder:-

“19.In view of my finding that the impugned order



Writ Petition No.28804 of 2023

of termination passed by the respondent against the petitioner is void ad initio, I find the petitioner Mr.M.George Francis is to be reinstated in his previous post and I find the petitioner is also entitled to backwages and other attendant benefits. Ordered accordingly. No Costs.”

7. The petitioners had also challenged the same before this Court in W.P.No.12035 of 2004 and by order dated 18.01.2011 this Court had dismissed the Writ Petition. Against the said order, the Writ Petitioners preferred an Intra-Court Appeal in W.A.No.2393 of 2013. The Division Bench of this Court eventhough did not entertain the said Intra-Court Appeal had quantified the backwages payable to the second respondent at Rs.2,00,000/-. From a reading of the earlier orders starting from the Award made by the Industrial Tribunal, it could be seen that the second respondent had been directed to be reinstated in the previous post. This direction has been issued by the Tribunal only after taking note of the fact that the second respondent had been selected to the post of Telecom Mechanic.

8. A conjoint reading of the Award as well as the proceedings dated



Writ Petition No.28804 of 2023

20.09.2000 would only draw us to a conclusion, that the Industrial Tribunal had only directed reinstatement of the second respondent only in the post of TSM that he had been holding prior to the order of termination. It is also an admitted case that the second respondent has not completed the mandatory training. The reinstatement had also been affirmed by this Court both in the Writ Petition as well as in the Writ Appeal. However, the Tribunal had come to a conclusion that the reinstatement was to the Group-D post which the second respondent had never held even for a single day. From the proceedings dated 20.09.2000, it is clear that the training for Telecom Mechanic would not automatically entitle the selectees to the post of Telecom Mechanic. Further, it also indicated that when the training is not completed, the name will be deleted from the list. When the said proceedings does not confer any right of appointment as a Telecom Mechanic, we are of the view that the Tribunal had wholly erred in coming to a conclusion that the reinstatement was to the post of Telecom Mechanic which is a Group-D post.

9. However, considering the fact that the casual labourers who had



Writ Petition No.28804 of 2023

been conferred with TSM were to be absorbed in the ensuing vacancies as per their seniority and that since, the order of reinstatement had been made as early as in the year 2004 and having been affirmed by this Court, the second respondent is deemed to be have been continued in service as a TSM from the initial date of his conferment of such status. Therefore, the petitioners are directed to consider the case of the second respondent based upon his initial seniority as per the scheme of grant of temporary status and regularisation scheme and if any of his juniors under the initial seniority list had been regularised, then his case can also be considered for regularisation on the date when his juniors have been regularised.

10. In fine, with the aforesaid directions this Writ Petition is allowed and the order of the Tribunal impugned herein is set aside. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(D.K.K.,J.) (K.B., J.)
11.07.2024

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation:Yes/No
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10/12



Writ Petition No.28804 of 2023

To
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The Registrar,
Central Administrative Tribunal,
Chennai Bench,
Chennai.

D. KRISHNAKUMAR., J.
and
K.KUMARESH BABU.,J.

Gba

A Pre-delivery order made in
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Writ Petition No.28804 of 2023

11.07.2024