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Writ Petition No.3263 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.03.2024

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

**Writ Petition No.3263 of 2024
and W.M.P.No.3527 of 2024**

1.Bharat Sanchar Nigam Limited,
Represented by the Chairman & Managing Director,
Bharat Sanchar Bhavan, H.C.Mathur Lane,
Janpath, New Delhi – 110 001.

2.The Chief General Manager,
Tamil Nadu Circle, BSNL,
No.16, Greams Road, Chennai – 600 006.

3.General Manager, (Hr & Admn.)
Office of the Chief General Manager, BSNL,
TN Circle, new Administrative Building,
No.16, Greams Road, 6th Floor,
Chennai – 600 006.

... Petitioners

Vs

1.The Registrar,
The Central Administrative Tribunal,
Madras Bench,
City Civil Court Buildings,
Chennai – 104.

2.B.Gurumoorthy

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3. Union of India,

Represented by the Secretary to
Ministry of telecommunication,
New Delhi – 110 001.

... 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 Hon'ble Central Administrative Tribunal culminating with its order dated 07.03.2023 passed in O.A.No.603 of 2021 and quash the same and pass further orders.

For Petitioners : Mr.M.Vaidhiyanathan

ORDER

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

This Writ Petition had been preferred by the department, wherein, the tribunal had set aside the order of the fourth petitioner dated 10.11.2020 and a consequential direction to the petitioners to restore the presidential order of absorption dated 31.12.2001 and a further declaration that the second respondent herein is an employee of erstwhile department of telecommunication who had been subsequently absorbed in BSNL and entitled to the benefits of Rule 37A of CCS pension Rules and with a further



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direction to the petitioner to restore the right of the second respondent to subscribe towards GPF and accordingly transfer the EPF accumulations to the GPF account and permit him to continue to contribute in GPF.

2. Heard Mr.M.Vaidhiyanathan, learned counsel for the petitioners.

3. He would submit that the second respondent herein was appointed as a Telecom Operating Assistant in September 2000 on compassionate grounds. Further on successful completion of the training, the second respondent was posted as a temporary telecom Office Assistant. In the interregnum, the BSNL came to be formed and the employees of the department of telecommunication were transferred to BSNL. Since the second respondent was only a trainee and not holding any post and he having successfully completed his training, pursuant to the BSNL being formed, he would be only treated as an employee of BSNL and therefore he could be entitled to only EPF. But, however, by a wrong understanding, a presidential order of absorption had been issued in favour of the second respondent as being permanently absorbed on and from 01.10.2000 and that based upon his option, he was permitted to become a member of the General Provident Fund as provided under Sub Rule 24 (2) of Rule 37A of CCS



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pension rules. When this had come to the light of the department, an order dated 10.11.2020 was issued and the presidential order dated 30.01.2012 was cancelled and he was treated as a BSNL recruite. Therefore, he would submit that there is no error on the part of the petitioners in passing the order impugned before the Tribunal. But, however, the Tribunal on erroneously considering of the facts, had set aside the order by holding that the second respondent is entitled to receive to be a member of the General Provident Fund and by restoring the presidential order dated 31.12.2001. Therefore, he would seek interference of this Court.

4. We have considered the submissions made by the learned counsel for the petitioners and perused the materials available on record before this Court.

5. From the typed set of papers, we had gone through the communication, dated 16.01.2003 issued by the Corporate Account Section of the BSNL, which reads as follows:-

“



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2. The persons who are/ will be appointed by BSNL on compassionate ground on or after 01.10.2000 as nominees of the employees of DOT/ DTS/ DTO died in harness up to 30.09.2000 will come under General Provident Scheme and not under EPF/ CPF Scheme.”

6. Clause 2 of the said communication indicates that the persons who are and will be appointed by the BSNL on compassionate grounds on or after 01.10.2000 as nominee of the employees of DOT/DTS/DTO who died in harness up to 30.09.2000 will come under the General Provident Fund and not under EPF/ CPF Scheme.

7. The case of the petitioner is that even though he was originally appointed on compassionate grounds by the DOT in September 2000, since he was only a trainee, the appointment of the second respondent which happened after 01.10.2000 could only be treated as an appointment by the BSNL and not an appointment by the DOT. Even if the case of the petitioners are to be accepted, even then, when a compassionate appointment which is made after 01.10.2000 of a nominee of an employee of DOT who had died in harness prior to 30.09.2000 would only be governed by the General Provident Fund. This communication has not been



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withdrawn, rescinded or modified. In that aspect, the reason assigned in the order dated 10.11.2001 canceling the presidential order of the second respondent could also not substantiate the case of the petitioners to deny the benefit of the General Provident Fund Scheme to the second respondent. The said issue had also been considered by a Co-ordinate Bench of the Punjab and Haryana High Court in C.W.P.No.14911-CAT of 2010 dated 20.08.2010 and C.W.P.No.14802 of 2010 dated 19.08.2010, wherein, the Co-ordinate Bench had up held the order of the Central Administrative Tribunal Chandigarh, where similar issue had been considered.

8. As we have already held that even if the presidential order is rescinded, in view of the communication extracted supra, we are of the view that the second respondent would be entitled to only the benefits of the General Provident Fund and not EPF/ CPF as claimed by the petitioners.

9. For the foregoing reasons, we do not find any infirmity or illegality in the impugned orders before us.

10. In fine, this Writ Petition is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.



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(R.S.K.,J.)

(K.B., J.)

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Index: Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

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To

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2.Union of India,
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