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Writ Petition No.36565 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.03.2024

CORAM

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

**Writ Petition No.36565 of 2023
and W.M.P.Nos.36566 of 2023**

- 1.Union of India,
Represented by its Secretary,
Ministry of communications &
Information Technology,
Department of Posts,
Dak Bhavan, Sansad Marg,
New Delhi – 110 001.
- 2.The Chief Post Master General,
Tamil Nadu Circle,
Anna Salai, Chennai – 600 002.
- 3.Senior Superintendent,
Railway Mail Service,
Chennai Sorting Division,
Chennai – 600 008.
- 4.The Head Record Officer,
Chennai Sorting Division,
Chennai – 600 008.

... Petitioners

Vs



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1. Jebeth Joshiya Issac

2. The Registrar,
The Central Administrative Tribunal,
Chennai Branch,
Chennai – 600 104.

... 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 relating to the impugned order passed by the Central Administrative Tribunal the 2nd respondent herein in O.A.No.353 of 2018 dated 20.02.2023 and quash the same and pass such further orders.

For Petitioners : Mr.A.R.L.Sundaresan
Additional Solicitor General
for Mr.C.Samivel, SPC

For Respondents : Mr.R.Malaichamy for R1
R2 – Tribunal

ORDER

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

This instant writ petition had been preferred against the order passed by the Administrative Tribunal wherein the order passed by the third petitioner dated 19.02.2018 was set aside and a consequential direction was issued to grant pension to the first respondent under the old pension scheme



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by extending similar benefit granted in O.A.No. 142 of 2017 and O.A.No.895 of 2016 and to pay the entire retirement benefits to the first respondent including the arrears of pension.

2. Heard Mr.A.R.L.Sundaresan, learned Additional Solicitor General for Mr.C.Samivel, learned Senior Panel Counsel appearing for the petitioners and Mr.R.Malaichamy, learned counsel for the first respondent.

3. Mr.A.R.L.Sundaresan, learned Additional Solicitor General would submit that the first respondent was engaged as an outside coolie in the year 1985. The first respondent was conferred temporary status by order dated 07.02.2001 with effect from 01.01.2001. The casual labourers who were conferred with such temporary status, were to be absorbed by way of regularisation as MTS based upon their seniority as and when vacancies arise in the sanctioned post. The first respondent attained the age of superannuation on 11.07.2017 and therefore was discharged from service on 10.07.2017 and had been paid all benefits which would accrue to a temporary status casual labourer. Since there was no vacancy that arose to fill up the same in which the first respondent could be accommodated based upon the seniority, but his service was never regularised. Therefore the first



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respondent's claim for grant of pension would not arise. The Tribunal without considering the fact that the first respondent had not been regularised into services in view of the non-availability of sanctioned post, had issued a direction to grant the pension to the first respondent by setting aside the order and hence, he would seek inference of the order passed by the Tribunal.

4. Countering his arguments, Mr.R.Malaichamy, learned counsel appearing for the first respondent would submit that the first respondent was granted temporary status in the year 2001 and he was eligible to be conferred with regularisation on completion of 3 years. Even though many employees like that of the first respondent had been regularised, the services of the first respondent was not regularised. The Tribunal had taken into consideration of all the aspects and also considering that no explanation had been offered by the petitioners for the delay in taking the case of the first respondent, had held that the first respondent cannot be responsible for the delay as there was no prompt action on the part of the petitioners. The Tribunal had also given a categorical finding that the temporary status ought to have been granted to the first respondent even in the year 1991 and if



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such a temporary status being granted, he would have been regularised and his seniority would be above the many other employees who were regularised in the vacancies arose prior to the superannuation of the first respondent. Therefore, he would submit that there is no infirmity in the order passed by the Tribunal.

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. The claim of the first respondent is that he having being inducted into the services as a casual labourer in the year 1985 ought to have been granted the temporary status in the year 1991, when the Scheme of the year 1989 was implemented. The Tribunal had also proceeded on the basis that there is a delay in granting the temporary status to the first respondent and had proceeded to hold that he would be entitled for pensionary benefits by treating him as a regularised employee.

7. At the out set, we are not in agreement either with the contention raised by the learned counsel for the first respondent nor the reasonings assigned by the Tribunal. When the claim of the first respondent was that he



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should have been given a temporary status in the year 1991 itself, the first respondent hitherto had not made a claim for such grant of temporary status.

Even when he was granted temporary status in the year 2001, he had not made a claim that a temporary status should have been granted at an earlier date and not in 2001.

8. When that being the case, the Tribunal ought not to have given the reasoning that the non-granting of temporary status in the year 1991 in favour of the first respondent to hold so. The Tribunal had further proceeded to count the period of temporary status between 2001 and 2003 when the first respondent had not been regularised into service. The question of counting 50% of services rendered as temporary status employee for the purpose of retirement benefits on being regularised as a Grade-D employee does not arise.

9. We had called upon the learned Additional Solicitor General to file a Status Report as regards to the seniority of the temporary casual labourers based upon which the regularisations were made. Pursuant to the said direction, a Status Report had also been filed by the third respondent herein. The seniority of the temporary casual labourers numbering 97 employees



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were placed before us. From the Status Report, it could be seen that the first respondent was ranked at Sl. No.85. Various persons who had been appointed as a Mazdoor from the year 1982 were placed in the seniority list. The first person in the Sl.No.1 was appointed as a Mazdoor in the year 1982 and he had been regularised as a MTS on 25.02.2013. Similarly, the person in Sl.No.84 was appointed on 02.01.1985 as a Mazdoor and he was appointed as a MTS on 30.11.2016. The person in Sl.No.86 was appointed on 09.01.1985 as a Mazdoor and he was regularised on 21.11.2017.

10. It is an admitted case, that the first respondent had superannuated on 10.07.2017. It is the case of the petitioners that after 30.11.2016 that is when the person in Sl.No.84 was regularised, there was no vacancy in the cadre, for the first respondent to be regularised. Thereafter, the vacancy arose only in November 2017 in which the person in Sl.No.86 was regularised. In the interregnum, the first respondent had superannuated on 10.07.2017 and therefore, there was no scope for regularising the services of the first respondent. Since he was not regularised as a regular employee, there was no procedure under which he could be entitled for pension much less to count the 50% of the period of service that the first respondent had



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put in as a temporary casual labourer even according to the Rules.

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11. In such an event, the reasoning and findings of the Tribunal in coming to a conclusion that the first respondent ought to have been given a temporary status even in the year 1991 and the reasoning that the first respondent would be entitled to count 50% of the temporary services rendered by him for grant of pension that too under the Old Pension Scheme are all without any basis and is contrary to the facts that had been stated above. For which reasons we are of the considered view that the order of the Tribunal has to be interfered with by this Court. For the reasons stated above, the order passed by the Tribunal in O.A.No.353 of 2018, dated 20.02.2023 is liable to be set aside.

12. In fine, this Writ Petition is allowed and the order passed by the Tribunal in O.A.No.353 of 2018, dated 20.02.2023 is set aside. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(R.S.K.,J.)

(K.B., J.)

19.03.2024



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Index: Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

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To

The Registrar,
Central Administrative Tribunal,
Madras Bench, High Court Buildings,
Chennai – 600 104.



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R.SURESH KUMAR., J.
and
K.KUMARESH BABU.,J.

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