IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.01.2024

CORAM

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

Writ Petition No.36034 of 2023
and W.M.P.No.36007 of 2023

1. Union of India,
   Rep. By the Chief Post Master General,
   Tamil Nadu Circle, Anna Salai,
   Chennai – 600 002.

2. The Postmaster General,
   Southern Region(TN),
   Madurai – 625 002.

3. Senior Superintendent of Post Offices,
   Tuticorin Division, Tuticorin.

4. The Assistant Superintendent of Post Offices,
   Tiruchendur Sub Division,
   Tiruchendur – 628 215. ... Petitioners

Vs.

1. A.Selvaraj

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

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, calling for the entire records of the impugned order dated 01.03.2003 passed in O.A.No.1020 of 2021 by the Hon'ble Central Administrative Tribunal, Chennai Bench and quash the same.

For Petitioners : Mr.C.Kulanthaivel

For Respondents : Mr.Ramaswamy Rajarajan [R1]
R2- Tribunal

ORDER

(Order of the Court was made by R.SURESH KUMAR,J.)

This writ petition has been directed against the order passed by the Central Administrative Tribunal, Chennai Bench in O.A.No.1020 of 2021, dated 01.03.2023.

2. That the first respondent was working as a 'Gramin Dak Sevak' [in short, 'GDS'] for more than 40 years at the appellant Department and since he attained the age of superannuation, he has been discharged on 11.04.2019 at the age of 65.

3. As per rule, which is in vogue, these kind of GDS are not entitled for any pension, but an *ex-gratia* gratuity as retiral benefits would be given.

4. Insofar as the payment of such *ex-gratia* gratuity is concerned, it should be paid on the date of discharge itself. This has been ensured by instruction No.23 of GDS Conduct and Engagement Rules [in short, 'the Rules']. To appreciate the same, the instruction/rule No.23 is extracted hereunder:

> "***(23) Appointing Authority should obtain application well in advance from the Gramin Dak Sevak for payment of ex gratia /Severance Amount, etc., and sanction the dues before discharge,_*** *I am directed to state that complaints about delay in payment of ex gratia gratuity /Severance Amount, etc., to Gramin Dak Sevaks who are discharged from employment are being received in this office.*
>
> *2. In this connection, it is mentioned that as per existing instructions, Gramin Dak Sevaks eligible for payment of ex gratia gratuity /Severance Amounts, etc., have to apply for the same and on receipt of the applications, the case will have to be processed. It has been noticed that there were cases where action for the grant of ex gratia gratuity/ Severance Amount, etc., had not been initiated for want of a formal application from the connected Gramin Dak Sevak.*
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> *3. It has been decided that it should be made mandatory for the Appointing Authority to intimate the Gramin Dak Sevak before the date of his discharge from*

employment in writing that he is required to apply for payment of ex gratia gratuity/Severance Amount, etc., due to him and also obtain an application at the appropriate time from him and process the case well in advance so that ex gratia gratuity/ Severance Amount, etc., can be sanctioned by the time Gramin Dak Sevak actually discharges from employment. Appointing Authorities should, therefore, ensure that a proper watch is kept on all potential claim cases and action is intimated expeditiously at the appropriate time."

5. Under this Rule, the appointing authority have been mandated to intimate the GDS before the date of his discharge from employment in writing that, he was required to submit an application for payment of *ex-gratia* gratuity and also the employer/appointing authority obtain an application at the appropriate time from the GDS and it shall be processed in advance, so that such *ex-gratia* gratuity can be sanctioned by the time GDS is actually discharged from employment.

6. Despite this has been mandated under the relevant Rule/instruction, which has been extracted herein above and knowing that the first respondent is going to be discharged on 11.04.2019, the concerned authority of the appellant Department though had received an

application from the first respondent on 09.05.2019, where they seems to have found that the first respondent has filed an application with some omissions, immediately that has not been brought to the notice of the GDS and no communication had been given to rectify the same and to resubmit the application.

7. In this context, even though it was claimed by the appellant Department that a phone message has been sent by the appellant, which has not been disclosed. Probably, such a message would have come from the Department to the employee only belatedly, therefore immediately he responded by resubmitting the formal rectified application on 28.11.2019, thereafter, it was processed and the *ex-gratia* gratuity was allowed and sanctioned only on 21.01.2020.

8. Since the said amount of *ex-gratia* gratuity had been paid later after a delay of several months, for the said delayed payment, the first respondent/applicant sought for an interest, which was negated by the order impugned before the Tribunal. The Tribunal also having considered the factual matrix and legal position has allowed the said O.A by directing the appellant Department to pay the interest at the rate of 18%

from the date of delayed payment. Aggrieved over the same, the present writ petition has been filed.

9. Heard Mr.C.Kulanthaivel, learned Standing Counsel appearing for the appellant Department and Mr.Ramaswamy Rajarajan, learned counsel appearing for the first respondent.

10. Insofar as the duty caused upon the appointing authority/immediate employer of GDS is concerned that has been made clear under Rule 23 as has been extracted herein above, where the word used is "it should be made mandatory for the Appointing Authority to intimate the Gramin Dak Sevak before the date of his discharge from employment". Therefore, it is a duty caused upon the Appointing Authority to get such an application from the GDS and forward the same to the sanctioning authority in advance i.e., well before the date of discharge.

11. Here in the case in hand, even though such an application was received from the GDS it was only after the discharge date

i.e., on 09.05.2019 and if there is any omission that should have been immediately brought to the notice of the GDS to rectify and to resubmit. However, no documents have been filed before this Court that, immediately such a procedure has been adopted by the appellant Department. Hence, resubmission on 28.11.2019 cannot be said to be a delayed one and in this regard, the delay cannot be fastened on the employee and it should be attributable on the appellant Department, therefore it can very well be considered that there has been a delay in payment of the *ex-gratia* gratuity, for which certainly the employee would be entitled to get interest.

12. The learned Standing Counsel appearing for the appellant also questioned the quantum of interest allowed by the Tribunal to the extent of 18%.

13. In this context, the learned counsel appearing for the first respondent even though has relied upon a decision of the Hon'ble Supreme Court in the case of ***Vijay L.Mehrotra Vs. State of Uttra Prades and Ors.*** reported in ***[2000 AIR SCW 2678]*** and a Division Bench judgment of Punjab and Haryana High Court in the case of ***Karnail***

Singh Vs. State of Punjab in ***Civil Writ Petition No.15965 of 1998,*** where 18 percent interest since have been allowed for making the delayed payment of such retiral benefits, this Court feels that, the 18% interest would be on the higher side as there has been no fixed rate of interest since has been made in the Rule, we feel that 12% interest would be ideal to be fixed for making such payment of interest for the delayed payment of *ex-gratia* gratuity, therefore to that extent, the judgment of the Tribunal, which is impugned herein requires some modification.

14. Resultantly, the following orders are passed in this writ petition:

- That the impugned order is sustained, however with the following modification:
- That the appellant Department shall calculate the interest at the rate of 12% for the delayed payment of *ex-gratia* gratuity and other retiral benefits to the first respondent from the date of due till the date of payment and accordingly, the same shall be calculated and be paid to the first respondent within a period of two months from the date of receipt of a copy of this order.

With this modification of the impugned order, this writ petition is disposed of. No costs. Connected miscellaneous petition is closed.

(R.S.K.,J.) **(K.B., J.)**

19.01.2024

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

mp

To

The Registrar,
The Central Administrative Tribunal,
Chennai Bench, Chennai – 104.

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

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Writ Petition No.36034 of 2023

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