IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2017

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.7148 of 2011
and
M.P.No.2 of 2011

Mohammad Abdul Saqeeb .. Petitioner

Vs.

1.Government of Tamil Nadu rep. By
Special Secretary to Government,
Finance (T & A II) Department,
Chennai - 9.

2.The Director of Treasuries and
Accounts, Chennai - 15. .. Respondents

Prayer:
Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records of the first respondent relating to orders in (1) G.O.(2D) No.158 Finance (T & AII) Department dated 30.12.2010 (2) Government Letter No.23750/TA.II/2010 Finance (T & AII) Department dated 18.06.2010 and (3)G.O.Ms.No.355 Finance (T & AII) Department dated 08.06.2006 to quash the same to the limited extent of revision of effective date of regularisation as 23.12.2002 and to issue consequential directions to the respondents to restore G.O.Ms.No.420 Finance (T & A II) Department dated 03.08.2004 by regularising the services of the petitioner in the post of Junior Assistant with effect from 11.06.1996 forenoon with all consequential benefits.

For Petitioner .. Mr.M.Ravi

For Respondents.. Mr.A.Zakkir Hussain,
Addl. Govt. Pleader

ORDER

The petitioner has approached this Court seeking the following relief:

to issue a writ of certiorarified mandamus to call for the records of the first respondent relating to orders in (1) G.O.(2D) No.158 Finance (T & AII) Department dated 30.12.2010 (2) Government Letter No.23750/TA.II/2010 Finance (T & AII) Department dated 18.06.2010 and (3)G.O.Ms.No.355 Finance (T & AII) Department dated 08.06.2006 to quash the same to the limited extent of revision of effective date of regularisation as 23.12.2002 and to issue consequential directions to the respondents to restore G.O.Ms.No.420 Finance (T & A II) Department dated 03.08.2004 by regularising the services of the petitioner in the post of Junior Assistant with effect from 11.06.1996 forenoon with all consequential benefits.

2.The petitioner was appointed as Junior Assistant in the Treasuries and Accounts Department on compassionate grounds on 11.06.1996. The petitioner belongs to linguistic minority community and possesses adequate knowledge of Tamil at the time when he was appointed in 1996. However, after joining the Government Service, the petitioner had undergone training in Tamil organised by the Tamil University in May, 1998 and successfully completed the training by passing written test in August, 1999, which was conducted by the Tamil Nadu Public Service Commission (for short 'TNPSC'). However, the petitioner was not successful in viva-voce.

3.However, the case of the petitioner is that the Government has passed an order in G.O.Ms.No.408 Finance (T & A II) Department dated 05.09.2000, permitting relaxation of Rule 12A (b) of the General Rules in favour of the petitioner to continue him as Junior Assistant even though he was not successful in the viva-voce examination. It appears that subsequently the petitioner had passed the language examination conducted by the TNPSC in 2003.

4.While matter stood thus, the first respondent submitted a proposal on 22.12.2003 to the second respondent for regularizing the service of the petitioner. The said proposal was submitted after consulting the TNPSC. G.O.Ms.No.420 Finance (T & A II) Department dated 03.08.2004 was issued regularizing the service of the petitioner in the post of Junior Assistant from the date of his initial appointment i.e. 11.06.1996. The said Government Order also provided for consequential monetary benefits arising out of regularisation. According to the petitioner, the order has been issued after obtaining the concurrence from the competent authority.

5.After a lapse of two years, the Government issued another order in G.O.Ms.No.355 Finance (T & A) Department dated 08.06.2006 by which the earlier G.O.Ms.No.420 Finance (T & A II) Department dated 03.08.2004 came to be cancelled. By the said Government Order, the Government has revised the date of regularisation of the petitioner from the original date of his appointment i.e. 11.06.1996 to 23.12.2002 the date of passing of the language test conducted by the TNPSC. According to the Government, the regularisation was granted to the petitioner since passing of the language test, which is a prerequisite qualification.

6.At this, the petitioner has submitted a detailed representation on 10.11.2006 pointing out the fact that the Government already granted relaxation of Rule 12A(b) of the General Rules by G.O.Ms.No.408 Finance (T & A II) Department dated 05.09.2000 and only on that basis, the original order of regularisation vide G.O.Ms.No.420 Finance (T & A II) Department dated 03.08.2004 was issued and the petitioner was granted regularisation from the date of his initial appointment. Since there was no response to the representation submitted by the petitioner, he approached this Court in W.P.No.23250 of 2010 and the said writ petition was disposed of by the order dated 18.10.2010 directing the first respondent Government to dispose of the representation dated 16.04.2010. Thereupon, the Government viz., the first respondent issued G.O.(2D) No.158 Finance dated 30.12.2010 and rejected the representation of the petitioner by a non-speaking order. Earlier, another communication was issued on 18.06.2010 negativing the claim of the petitioner. All these orders are put to challenge before this Court.

7.Mr.M.Ravi, learned counsel appearing for the petitioner would submit that the impugned Government Order cancelling the earlier G.O.Ms.No.420 Finance (T & A II) Department dated 03.08.2004 cannot be sustained in law for the simple reason that the petitioner was granted due relaxation by another G.O.Ms.No.408 Finance (T & A II) Department dated 05.09.2000 and once relaxation is granted in favour of the petitioner, regularisation dates back to the date of initial appointment. Moreover, in the instant case, the petitioner himself had subsequently appeared and got himself qualified in the language test in 2003. In the said circumstances, the cancellation of the original G.O.Ms.No.420 Finance (T & A II) Department dated 03.08.2004 and granting regularisation to the petitioner from the date of passing of the language test i.e. 23.12.2002 is arbitrary, unjust, illegal and cannot be countenanced in law.

8.Learned counsel appearing for the petitioner would rely on the decision passed by this Court in W.P.No.25153 of 2010 dated 07.01.2011 wherein the learned single Judge of this Court has held that passing of the language test is not mandatory since the power is vested with the Government for grant of relaxation. In the instant case, such power has been exercised after taking all factors into consideration and therefore the Government Order issued by the first respondent dated 08.06.2006 (G.O.Ms.No.355) cannot be a valid exercise of power. Moreover, it is also averred in the affidavit filed in support of the writ petition that no notice has been served on the petitioner before issuing the said Government Order.

9.However, be that as it may, it has to be seen that once the Government had taken a conscious decision in granting relaxation in favour of the petitioner, that decision cannot be subsequently set at naught by passing another Government Order, that too, without giving any notice to the petitioner. The impugned order states that since qualifying in language test is a prerequisite qualification, the date of passing of the language test was taken into account for regularisation. Such statement will have significance only when the Government has not exercised its power of relaxation. Admittedly, when the power of relaxation has been exercised in favour of the petitioner, it is not open to the respondents to rely on the prerequisite qualification for the purpose of grant of benefit of regularisation from a later date.

10.Upon notice, Mr.A.Zakkir Hussain, learned Additional Government Pleader entered appearance on behalf of the respondents and filed a detailed counter affidavit. The counter merely reiterates the contents as contained in G.O.Ms.No.355 Finance (T & A II) Department dated 08.06.2006, stating that it was a prerequisite qualification and therefore, the earlier Government Order, which granted regularisation from the date of initial appointment has been cancelled rightly.

11.This Court does not find any merit in the said contention in view of what is stated above. This Court does not find any infirmity in the order passed earlier by the Government vide G.O.Ms.No.420 Finance (T & A II) Department dated 03.08.2004 granting the benefit of regularisation from the date of initial appointment of the petitioner from 11.06.1996. In the above said circumstances, the impugned orders in (1) G.O.(2D) No.158 Finance (T & AII) Department dated 30.12.2010 (2) Government Letter No.23750/TA.II/2010 Finance (T & AII) Department dated 18.06.2010 and (3)G.O.Ms.No.355 Finance (T & AII) Department dated 08.06.2006 are set aside and there shall be a consequential direction to the respondents to restore G.O.Ms.No.420 Finance (T & A II) Department dated 03.08.2004 and grant the benefits as envisaged in the said Government Order to the petitioner. The said order shall be complied with within a period of two months from the date of receipt of a copy of this order.

12.The writ petition stands allowed on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

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To

1. The Special Secretary to Government,
   Finance (T & A II) Department,
   Chennai - 9.

2. The Director of Treasuries and
   Accounts, Chennai - 15.

+ 1 cc to Mr.M.Ravi, Advocate,SR.70323

+ 1 cc to The Govt.Pleader, SR.69812

W.P.No.7148 of 2011

MR(CO)
NR 06/10/2017