



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.01.2017

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WEB COPY

THE HON'BLE Mr. JUSTICE R. SURESH KUMAR

W.P.(MD) No.17749 of 2013

and

M.P.Nos.1 and 2 of 2013

K.Susila

... Petitioner

-vs-

1.The Additional Chief Secretary to Government
Environment & Forests Department,
Secretariat,
Chennai.

2.Managing Director,
Arasu Rubber Corporation Ltd.,
Vadasery, Nagercoil.

3.The Divisional Manager,
Arasu Rubber Corporation Ltd.,
Chithar Division,
Chithar, Kanyakumari District

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Certiorari to call for the records relating to the impugned order issued by the 3rd respondent in his proceedings in Na.Ka.No.g/3466/2009 dated 05.10.2013 (received by the petitioner on 17.10.2013) and quash the same as illegal.

For Petitioner : Mr.MohammedImran
for M/S.Ajmal Associates,

For Respondents : Mr.V.Muruganandham for R1
Addl. Government Pleader

: Mr.T.R.Janardhanan, for R2 & R3

O R D E R

The prayer in the writ petition is for a writ of Certiorari to call for the records relating to the impugned order issued by the third respondent in his proceedings in Na.Ka.No.g/3466/2009



dated 05.10.2013 (received by the petitioner on 17.10.2013) and quash the same.

2. The petitioner was appointed as Junior Assistant at the respondent Department on 29.09.2008. As per the service rule, which is in vogue, governing the services of the petitioner, the probation period is two years, which, the petitioner has completed within the continued period of three years. Also, within the said period, the petitioner has to complete the Accountancy Test and Factory and Lower Department Test. Since admittedly, the petitioner has not completed these two tests, within the said period, she was considered deemed to have been terminated from service within the probation period as per Clause 20(ii) of the Tamil Nadu Arasu Rubber Corporation Service Rules (hereinafter referred to as 'the Rules') of the respondent Corporation and accordingly, the impugned order was passed dated 05.10.2013 by the third respondent, whereby the services of the petitioner has been terminated. Challenging the same, the petitioner has filed the present writ petition.

3. Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents.

4. The learned counsel for the petitioner would contend that insofar as the completion of two tests is concerned, since the petitioner is having the qualification of B.Com. degree, she need not once again go for the Accountancy Lower level test, because, those, who do not have the B.Com degree alone has to pass the said test. Since the petitioner is having the said qualification, she need not pass the said test. Insofar as the other test is concerned, the petitioner has not completed the said tests within the said period. However, the learned counsel for the petitioner would heavily relying upon Rule 20(ii) of the Service Rules governing the service of the petitioner. According to the said Rule, if the person within the period of probation has not completed the said test, his probation can be extended to the maximum of 5 years and within the said period of five years, if he has not completed, either the services of the person can be terminated, in case, the probation is not extended. But such termination should have been made within a period of six months from the date of completion of such probation.

5. In this regard, the learned counsel for the petitioner relies Rule 20(ii) and (iii) of the Rules, which reads thus:

"ii. If passing of any test (s) during probation has been prescribed for satisfactory completion of probation, the probation will be extended suitably until the test (s) is/are passed.

iii. The period upto which the probation of a corporation employee may be extended so as to enable him to acquire the test qualification is 5 years. If



he/she does not acquire the test qualification even within the above said extended period of probation, he/she should be reverted to his/her substantive post and qualified and eligible juniors should be considered for promotion. If such a person has been appointed by direct recruitment and has not acquired the test qualification within the extended period of probation his/her probation should be terminated.

(iii) If the probation is not extended or if they not terminated within a period of 6 months from the date of completion of probation, the individual shall be deemed have completed the probation satisfactorily."

6. Moreover, the learned counsel for the petitioner would also rely upon the subsequent Government Order dated 26.11.2014 in G.O.Ms.No.132 of Environment and Forest Department. By the said G.O., the said requirement has been amended and the amendment, pursuant to the said G.O., reads thus:

"In the said Rules, in ANNEXURE -II, the following entries in column (7) against SlNo.17 in column (1), "Junior Assistant" in column (2) and "Direct Recruitment" in column (3) thereof, shall be omitted, namely,

Within the period of probation he/she must pass the following tests.

(I) Accountancy lower/B.Com/M.Com from a recognised University (G.O.Ms.No.486 Finance Department dated 11.04.1970 & Government letter (Ms) No.157 Environment & Forest Department dated 10.06.1994)

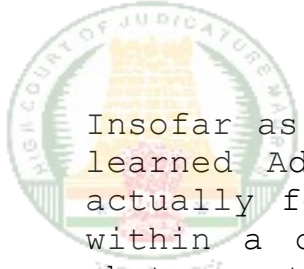
(ii) Factories and Labour Department Tests"

3.This order issues with the concurrence of Finance (BPE) Department vide U.O.No.55634/BPE/14 dated 25.11.2014."

By order of the Governor"

7. In view of Rules 20(ii) as well as (iii), the amendment made pursuant to G.O.Ms.No.132 and also the petitioner is already having the qualification of B.Com., degree, she should have been treated as completed the said test by way of deeming clause and accordingly, her probation should have been completed satisfactorily and her service should not have been terminated.

8. Per contra, the learned Additional Government Pleader submits that the G.O. No.132 was issued subsequently ie., on 26.11.2014. Therefore, whatever amendment made in the said G.O., would not be made applicable to the case of the petitioner. Insofar as having the qualification of B.Com., degree is concerned, it is for the petitioner to satisfy the authorities as to whether the petitioner can be given exemption to pass the Accountancy test in view of the qualification of B.Com., degree.



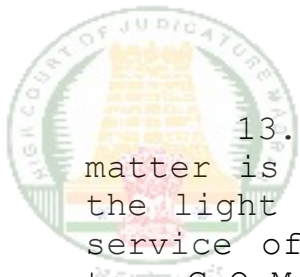
Insofar as the deeming clause under Rule 20(iii) is concerned, the learned Additional Government Pleader submits that probation is actually for two years that should have been completed separately within a continued service period of three years and therefore, whatever test prescribed to be completed by the incumbent like, the petitioner within the probation period, the test should have been completed within the said period of three years. Since admittedly, the petitioner has not completed the said test within the said period of three years, the question of invoking the deeming clause under Rule 20(iii) cannot be pressed into service insofar as the case of the petitioner is concerned and therefore, the impugned order is sustainable.

9. This Court had considered the rival submissions made by the learned counsel on either side.

10. As has been rightly pointed out by the learned counsel for the petitioner Rule 20(ii)&(iii) is very clear and the probation period of two years to be completed within a period of three years service can be extended upto 5 years or even beyond that for the purpose of completion of the test. Here in the case on hand, the petitioner joined service on 29.09.2008. Therefore, the five years period is over by 28.09.2013. However, no termination order was passed within the said period. Therefore, Rule 20(ii) and (iii) are applied in the case of the petitioner, certainly, deemed probation under sub Clause (iii) of Rule 20 can very well be made applicable to the case of the petitioner. Also, in order to tide over the situation like this, the Government thought it fit to bring the amendment to the Rule, of course, subsequently by way of G.O.No.132 dated 26.11.2014.

11. When the impugned order was questioned before this Court in the writ petition, this Court has stayed the impugned order and by virtue of the same, the petitioner has been in continuous service all along. Since the petitioner's service is continuous, of course, pursuant to the orders of this Court and in the meanwhile, since G.O.Ms.No.132 has come into effect from 26.11.2014, the benefit conferred through the said amendment made pursuant to the said G.O. can also be extended to the petitioner. Moreover, the learned counsel for the petitioner is assertive that since the petitioner is having the B.Com., degree as one of her educational qualification, the requirement of passing out of the the said test, namely, Accountancy test can be dispensed with. Also the deeming clause in 20(iii) can be invoked in the case of the petitioner.

12. For these reasons, the impugned order terminating the services of the petitioner cannot be sustainable one and accordingly, the impugned order is quashed.



13. Resultantly, the impugned order is quashed and the matter is remitted back to the respondents for reconsideration in the light of the Rule 20(ii) and (iii) of the Rules governing the service of the petitioner as well as the amendment made pursuant to G.O.Ms.No.132 Environment and Forest Department dated 26.11.2014 as well as the fact that the petitioner is having the qualification of B.Com., degree. After reconsidering the issue in the light of the aforesaid factors, necessary orders permitting the petitioner to complete the probation and declaring the same accordingly, can also be passed by the respondents and the needful as indicated above shall be done within a period of four weeks from the date of receipt of a copy of this order.

14. With the above directions, the writ petition is allowed in part. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CO-III)

/True Copy/

Sub Assistant Registrar

RR

To

1.The Additional Chief Secretary to Government
Environment & Forests Department
Secretariat, Chennai.

2.Managing Director,
Arasu Rubber Corporation Ltd.,
Vadasery, Nagercoil.

3.The Divisional Manager,
Arasu Rubber Corporation Ltd.,
Chithar Division, Chithar, Kanyakumari District

+2 cc to The Special Government Pleader in SR.No.3405

+1 cc to M/S.Ajmal Associates, Advocate in SR.No.3278

CSL/RSK/SKN/14.3.17-5p-7C

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