

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2018

CORAM :

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. No.46319 of 2006
and M.P.No.2 of 2006

R.V.Ramachandran

...Petitioner

Versus

1.The State of Tamilnadu rep. by its
Secretary, Finance Department,
Fort St.George, Chennai-600 009.

2.The Secretary,
Labour and Employment Department,
Fort St.George,
Chennai-600 009.

3.The Special Commissioner-Cum-Commissioner,
Employment and Training,
Guindy,
Chennai-600 032.

...Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records relating to the third respondent's order made in Letter Ov1/45143/2005 dated 15.9.2006, to quash the same and consequently direct the respondents to revise and refix the scales of pay of the petitioner in the selection grade on the date when the same fell due i.e.1993 and to revise and refix the pension and other pensionary benefits forthwith.

For Petitioner : Mr.L.Chandrakumar
For Respondents : Mr.K.Ravikumar (for RR1 to 3)
Additional Government Pleader.

ORDER

The petitioner has filed this Writ Petition challenging the order dated 15.9.2006, wherein the third respondent ordered for recovery of excess of salary and other pensionary benefits and also re-fix the scale of pay and pension.

2.The case of the petitioner is that the petitioner was appointed as a Comptist on 10.03.1983. The services of the petitioner was regularised in the year 1990 vide G.O.(3D)No.7, Labour & Employment Department from the date of initial appointment with effect from 10.03.1983. After completion of ten years, the petitioner is entitled for selection grade pay. Thereafter, the petitioner took part in the District Office Manual Test during November 1993 and thereafter in the year 1994, he took part in the Accounts Test for Sub-ordinate Officers-Part-I and Department test for Officers in the National Employment Service Manual and the results were published. However, the petitioner's services were terminated since the petitioner failed in Accounts Test for Sub-ordinate Officer Part-I test on 21.08.1994. Against the said termination of service, the petitioner filed an appeal before the Government, wherein the Government had set aside the order of termination and directed reinstatement with regularization of the period of break in service vide G.O.(3D)11 dated 31.08.1995. In compliance to the same, the petitioner was reinstated on 12.09.1995 and he has successfully completed the requisite departmental tests without any pay fixation and on 17.02.2000, he submitted an application for voluntary retirement and he was allowed to retire voluntarily. After five years of his retirement, the third respondent passed an impugned order dated 15.09.2006 informing him that the scale of pay came to be revised on the premise and that he has been extended with irregular pay fixation between 01.09.1998 and 17.02.2000 being fixed at Rs.5,500/- instead of Rs.5,300/- on the ground that probation of the petitioner was not satisfactorily completed and ordered recovery of excess amount paid. Aggrieved against the recovery order, the petitioner has filed this present petition.

3.Heard Mr.L.Chandrakumar, learned counsel appearing for the petitioner as well as Mr.K.Ravi Kumar, learned Additional Government Pleader appearing for the respondents.

4.The learned counsel for the petitioner would submit that the petitioner was initially appointed in the year 1983 and his services were regularized in the year 1990. Though the petitioner's services was terminated for not passing in the Accounts test, he was re-instated by the Government by its G.O. (3D)11 dated 31.08.1995. After rendering 17 years of service, he was permitted to voluntarily retire on 17.02.2000. He further submitted that the Government has passed the impugned order contrary to Rule 27(b) of Tamil Nadu State and Subordinate Service Rules. Rule 27(b) clearly states that if any person not declared probation within a period of six months, the probationer shall be deemed to have satisfactorily completed his probation on the date of expiry of the prescribed or extended

period of probation unless any charges are pending. Even if charges are pending, it should be completed within six months. Therefore, the petitioner should be declared probation. Even, if the authority declares probation after expiry of the time, it is deemed to be declared. Apart from citing the above rules, the learned counsel for the petitioner relied upon the decision of this Court in K.Venkataraman Vs. The State of Tamil Nadu, the relevant portion of the order is extracted hereunder:

".....If the appointing authority decides that a probationer is suitable for such membership, it shall, as soon as possible, issue an order declaring the probationer to have satisfactorily completed his probation. If no such order is issued within six months from the date on which he is eligible for such declaration, the probationer shall be deemed to have satisfactorily completed his probation on the date of expiry of the prescribed or extended period of probation. A formal order declaring the completion of probation shall, however, be issued by the competent authority. G.O.Ms.No.249, Food Department, dated 4.11.1978, issued by the first-respondent, clearly bears out that the appellant's services in the Civil Supplies Department were regularized with effect from 10.12.1975 F.N and there was a direction to the Second-respondent to send the necessary proposals declaring the satisfactory completion of probation of the officers, including the appellant, whose services have been regularised. That the appellant completed the prescribed period of probation in the Civil Supplies Department is also not in dispute. The respondents bank upon and take cover under the lack of a formal order declaring the completion of probation to deny him the status of a permanent servant in the Civil Supplies Department. It is true that expiration of the probation period would not necessarily lead to regularisation or confirmation. But, if the service rule, by the force of its working, brings about that result, that must prevail. Here, we have noted the service Rule, namely, Rule 27(b) of the Rules and it enjoins upon the appointing authority to issue an order declaring the probationer to have satisfactorily completed his probation and if no such order is issued within six months from the date on which the probationer becomes eligible for such declaration, the probationer shall be deemed to have completed his probation on the date of expiry of the concerned period. Though a formal order declaring the completion of probation shall be issued by the competent authority, the omission to issue the formal order will not take away the force of the implications of the rule, namely that while an order declaring the

probationer to have satisfactorily completed his probation will have to be issued by "the appointing authority, the failure on his part to do so will not alter the position and the probationer shall be deemed to have satisfactorily completed his probation, despite the fact that no such order has been issued. Hence, it is not possible to hang on to the theory that the lack of declaration of completion of probation on the part of the second respondent will negative the appellant the benefits of the legal implications of the completion of the probation period and his services in the Civil Supplies Department getting regularised. It must be noted here that the Second-respondent cannot take advantage of his omission to issue the declaration of completion of probation of the appellant in spite of G.O.Ms.No.249, Food Department, dated 4.11.1979, issued by the first-respondent and that would be permitting the respondents to take advantage of their own wrong to stultify the legitimate claim of the appellant. Once it is found that the services of Appellant in the Civil Supplies Department were regularised, it is not possible to resort to the process of reversion of the appellant to the Judicial Department. There had been a complete severance between the two services and the appellant had gone into Civil Supplies Department as a permanent hand and there is no question of reversion of the appellant to the Judicial Department."

5.Per contra, the learned Government Advocate would submit that as per the service rules, any person whose services have been regularized in the post of Comptist should satisfactorily complete two years period of probation within a continuous period of three years and pass the departmental tests such as (1)Accounts Test for Sub-ordinate Officers Part-I (2) District Office Manual Test and (3) Department Test for officers in the National Employment Service Manual within the period of probation. However, the petitioner has passed two tests except the account test within the prescribed time. As his services in the post of Comptist was regularized with effect from 10.03.1993, he had commenced his probation from that date but, he has not passed all the tests within the period of his probation. However, he was allowed one more year to get passed in the accounts test within that time. Since, he had not passed the accounts test within the extension period, his probation was terminated on 29.08.1994 and discharged from the post of Comptist with immediate effect. However, on appeal, the Government had reinstated the petitioner on 31.08.1995 and allowed to go on voluntary retirement from service.

6.On perusal of the counter affidavit filed by the respondents, it would show that though the petitioner was

initially terminated from service, however on appeal he was reinstated into service by the Government and was allowed to retire voluntarily. Hence, the petitioner's case falls into the Rule of 27(b) of the Service Rules. Since the authority has not passed the order within the prescribed period, the petitioner should be deemed to be declared probation within the period of six months and also in view of the decision cited supra, this writ petition is allowed and the order dated 15.09.2006 passed by the third respondent in Ov1/45143/2005 is set aside. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary,
State of Tamilnadu,
Finance Department,
Fort St.George, Chennai-600 009.
- 2.The Secretary,
Labour and Employment Department,
Fort St.George,
Chennai-600 009.
- 3.The Special Commissioner-Cum-Commissioner,
Employment and Training,
Guindy,
Chennai-600 032.

+lcc to Mr.L.Chandrakumar, Advocate sr.no.41519
+lcc to Government Pleader sr.no.41864

W.P. No.46319 of 2006

nr 16/07/2018