



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 21.03.2018

Coram :-

THE HON'BLE DR.JUSTICE S.VIMALA

and

THE HON'BLE MRS.JUSTICE T.KRISHNAVALLI

W.P.(MD) No.16985 of 2017

V.Krishnaveni

... Petitioner

-vs-

The Principal District and Sessions Judge,  
Combined District Courts Campus,  
Madurai-625 020.

... Respondent

Prayer: Writ petition under Article 226 of the Constitution of India is filed praying for issuance of a writ of Certiorarified Mandamus, calling for the records pertaining to the impugned proceeding of the respondent vide order in A.No.12-G/2016 dated 31.05.2016 and quash the same; and further direct the respondent to fix the original seniority of the petitioner on par with his colleagues and juniors, i.e. between Mr.Jegannathan and Mr.Thennarasan and further direct the respondent to provide all the categorical promotions upto Grade II Bench Clerk along with the backwages due to the petitioner within a stipulated time and pass such other orders as this Honble Court.

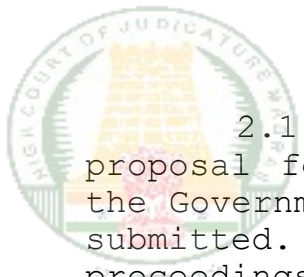
|                |                           |
|----------------|---------------------------|
| For Petitioner | : Mr.N.Karthik Kanna      |
| For respondent | : Mr.T.S.Mohamed Mohideen |

O R D E R

(Order of the Court was made by S.Vimala,J.,)

This writ petition has been filed, seeking a Writ of Certiorarified Mandamus, seeking to quash the order dated 31.05.2016 passed in A.No.12-G/2016 and to direct the respondent to fix the original seniority; to direct the respondent to provide all categorical promotions upto Grade-II Bench Clerk along with backwages within a limited time frame.

2. The petitioner / V.Krishnaveni, W/o.late P.Govindhan (then Process Server at the Principal District Court, Madurai) was appointed as Junior Assistant on compassionate ground, subject to concurrence of the Tamil Nadu Public Service Commission and posted as Junior Assistant, II Additional District Court / Special Court for CBI cases, Madurai. Accordingly, she joined duty on 01.12.2006.



2.1. The Principal District Judge, Madurai submitted a proposal for regularization of the services of the petitioner and the Government of Tamil Nadu did not pass any orders on the proposal submitted. The petitioner was promoted as Assistant by the proceedings dated 11.04.2012 and she was redeployed as Grade III Bench Clerk as per the proceedings dated 30.04.2013 of the PDJ, Madurai.

2.2 It is the claim of the respondent that the promotion given to the petitioner is contrary to Rule 36 of Tamil Nadu State and Subordinate Service Rules, as per the Government letter dated 12.11.2012.

2.3. Based on the said letter dated 12.11.2012, the promotions given to the petitioner were cancelled and she was reverted to her original post, namely, Junior Assistant (Entry Level) and was posted to work at Sub Court, Madurai. This order is under challenge in this writ petition.

3. Whether (based upon the said letter dated 12.11.2012) cancellation of promotions given to the petitioner and the reversion to her original post, is fair legal and justified is the issue to be considered?

4. It is essential to extract hereunder Rules 36 and 36A of the Tamil Nadu State and Subordinate Services Rules, which came into force with effect from 1.1.1955. It was pointed out, that the above rules were framed in exercise of powers conferred by the proviso under Article 309 of the Constitution of India. The said rules are reproduced below :-

"36. (a) Promotion - No member of a service or class of a service shall be eligible for promotion from the category in which he was appointed to the service unless he has satisfactorily completed his probation in that category:

Provided that a member of a service or class of a service who, having satisfactorily completed his probation in the category in which he was appointed to the service, has been promoted to the next higher category shall, notwithstanding that he has not been declared to have satisfactorily completed his probation in such higher category be eligible for promotion from such higher category:



Provided further that if scales of pay of posts in the feeder categories are different, the persons holding post carrying a higher scale of pay in the feeder category shall be considered first and that, if no qualified and suitable persons holding post in that feeder category are available, the persons holding post carrying the next higher scale of pay in descending order in other feeder categories shall be considered.

(b) (i) Promotions to selection category or grade.—Promotions in a service or class to a selection category or to a selection grade shall be made on grounds of merit and ability, seniority, being considered only where merit and ability are approximately equal. The inter-se-seniority among the persons found suitable for such promotion shall be with reference to the inter-se-seniority of such persons in the lower post.

(ii) Promotion according to seniority—All other promotions shall, be made in accordance with seniority unless—

(1) the promotion of a Member has been withheld as a penalty, or (2) a Member is given special promotion for conspicuous merit and ability.

(c) Appointment of a member to higher category not to be considered if he had been on leave for three or four years or more continuously.—Notwithstanding anything contained in sub-rules (a) and (b), a member of a service who had been on leave for a period of three years continuously for any reason except higher studies or for a period of four years continuously for higher studies, shall not be considered for appointment as a higher category either by promotion or by recruitment by transfer unless he has completed service for a period of one year from the date on which he joins duty on return from leave.

36A. Appointment by Recruitment by Transfer.—Appointments by recruitment by transfer to a class or category in a State Service from among the holders of posts in a Subordinate Service, shall be made on grounds of merit and ability, seniority being considered only where merit and ability are approximately equal."

5. The learned counsel for the writ petitioner has relied upon the judgment of the Division Bench of this Court passed in W.P. (MD) 18879 of 2016 dated 01.03.2017, by which the reversion to the original post, after cancelling the promotion granted, was set aside with a direction to grant all monetary and attendant benefit.

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5.1. A perusal of the said judgment (cited supra) would go to



show that the petitioner therein, namely, Rajesh Khanna got appointed on compassionate ground; that the Tamil Nadu Public Service Commission did not declare the completion of probation; that he was promoted as Assistant, Bench Clerk-Grade-III, Head Clerk, Bench Clerk-Grade II on 24.02.2010, 25.11.2011, 30.04.2013 and 12.01.2015 respectively; that after completion of nine years of service, without issuing any notice, there was an impugned order reverting the petitioner from the post of Bench Clerk Grade-II on the ground that he had been working without regularization in the entry level post of Junior Assistant; that the promotion given was contrary to Rule 36 of Tamil Nadu State and Subordinate Service Rules.

5.2. The Hon'ble Division Bench in the above case held that if the appointment is irregular or temporary, reversion should have been made within a reasonable period and the reversion made belatedly after nine years of service for no fault of the petitioner therein, the order is liable to be set aside.

6. The services of this writ petitioner have been regularized after passing of the impugned order and the regularization has been made with retrospective effect from 01.12.2006 forenoon from the date of joining duty of the individual.

6.1. Though the regularization is made with retrospective effect from 01.12.2006, the probation has not been declared and the order reads that she is on probation for a period of two years within a continuous period of three years.

6.2. Whether this order stating that she is on probation for a period of two years within a continuous period of three years is justified in the eye of law? Or else, whether the order should have been that the petitioner is deemed to have completed the probation.

7. In the letter dated 08.04.2010 of the Personnel and Administrative Reforms (S) Department, Secretariat, Chennai, it is mentioned that as per Rule 27 of General Rules for Tamil Nadu State and Subordinate Services, at the end of the period of probation, the Appointing Authority shall assess the suitability of the probationer for full membership and if found suitable, he 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 period of probation.

7.1. The said order dated 08.04.2010 also sounds a note of caution to the Appointing Authorities that appropriate disciplinary action will be taken against the Supervisory Officers, if order of satisfactory completion of probation is not issued in time by the Competent Authority.



8. It is not in dispute that the case of the petitioner herein is similarly placed like that of the petitioner Rajesh Khanna in the connected writ petition (cited supra). The facts are by and large similar.

9. Rule 27 of the Tamil Nadu State and Subordinate Services Rules stipulates probationer's suitability for full membership. If there is no termination of probation of a probationer under Rule 26 (a)(ii) or if there is no discharge of the probationer under Rule 27 (c) and if there is no extension of probation under Rule 26 (a)(ii) or Rule 28, then the deemed probation would become operative. It is also relevant to point out Rule 27-A, which provides for automatic declaration of probation, which reads as under:

"27-A. Automatic declaration of probation - Notwithstanding anything contained in Rule 27 of these rules except in cases where serious charges are pending, all officers, appointed by direct recruitment or by promotion or by transfer before the 1<sup>st</sup> January 1957 and whose probation has not yet been declared, shall under this rule and without further examination of their individual cases, be declared to have completed their probation, from the date on which they were eligible for such a declaration. Among those appointed on or after 1<sup>st</sup> January 1957, officers appointed on promotion or transfer, shall also be declared to have completed their probation satisfactorily, if on the 8th January 1962, they were eligible for such declaration and if no serious charges were pending against them. The cases of direct recruits appointed after 1<sup>st</sup> January 1957, shall be examined individually and orders passed by the competent authority within six months, from 8th January 1962; and if no orders are passed within this period of six months, they shall be deemed to have satisfactorily completed their probation on the date of expiry of the prescribed or extended period of probation. In the case of all officers appointed by direct recruitment or by promotion or by transfer, whose due date of completion of probation is on or after the 1st January 1962, but before the 8th January 1962, the order on their probation shall issue within six months from the date on which they are eligible for such declaration; and if no order is passed by the competent authority within this period, the officers shall be deemed to have completed their probation.

Provided that in all cases of completion of probation under this rule, formal orders declaring the completion of probation shall be issued by the competent authority.



10. It is also relevant to consider Rule 26 of the Tamil Nadu State and Subordinate Service Rules.

"26. Termination or extension of probation - (a) Where the special rules of any service prescribe a period of probation for appointment as a full member of the service, or where such period of probation has been extended under General Rule 28, the appointing authority may, at any time before the expiry of the prescribed period of probation or the extended period of probation, as the case may be- (i) discharge a probationer from the service for want of a vacancy; or

(ii) at its discretion, by order, either extend the period of probation of the probationer in case the probation has not been extended under General Rule 28 or terminate his probation and discharge him from service after giving him a reasonable opportunity of showing cause against the proposed termination of probation; Provided that where a probationer has been given reasonable opportunity of showing cause against the imposition on him of any of the penalties specified in clauses (iv), (vi), (vii) and (viii) of rule 8 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and at the conclusion of the disciplinary proceedings a tentative conclusion is arrived as to terminate his probation, a further opportunity of showing cause specifically against termination of his probation need not be given to him.

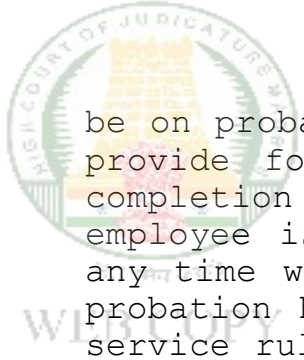
Explanation - An opportunity to show cause may be given after the appointing authority arrives at a provisional conclusion on the suitability or otherwise of the probationer for full membership of the service, either by such authority himself or by a subordinate authority who is superior in rank to the probationer. (b) (i) If within the period of probation a probationer fails to acquire the special qualifications or to pass the special tests if any, prescribed in the Special Rules or to acquire such other qualifications as may be declared by the State Government or by the appointing authority with the approval of the State Government to be equivalent to the said special qualifications or special tests, the appointing authority shall, by order, discharge him from the service unless the period of probation is extended under rule 28.

(ii)....."

11. It is not the case of the respondent that there was termination of probation of the petitioner under Rule 26(a)(ii) or there was discharge of the probationer under Rule 27(c) or there was extension of probation under Rule 26 (a)(ii) or Rule 28, and therefore, deemed probation would become operative in the case of the petitioner.

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12. Every candidate appointed against a permanent post shall



be on probation for a limited period. The appointing authority may provide for extended period of limitation. On the satisfactory completion of probation, the appointment may be confirmed. If the employee is not found suitable, his services may be discharged at any time within a period of probation. The law on the subject of probation has been varying, depending upon the peculiar pattern of service rules/regulations. Beyond the period of probation, whether automatically there is a deemed confirmation or there is a deemed extension of probation, when the employer has not passed any order after the expiry of the period of probation.

12.1. The Constitution Bench Judgment of the Supreme Court reported in AIR 1968 SC 1210, *State of Punjab vs. Dharam Singh*, held that the presumption about continuation, beyond the period of probation, as a probationer stood negated by the fixation of a maximum time limit for the extension of probation. Consequently, in such cases, the termination after expiry of the maximum period upto which probation could be extended was held to be invalid, inasmuch as the officer concerned must be deemed to have been confirmed.

12.2. In the later Judgment of the Supreme Court, reported in *Samsher Singh, etc. vs. State of Punjab*, the Constitution Bench of larger composition, held that, where there is a provision for deemed extension of period of probation, if the probationer is not confirmed on the expiry of his period of probation, a probationer is not to be considered as confirmed till an order of confirmation is actually made.

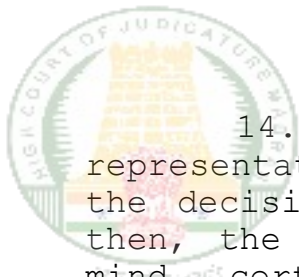
13. So far as this case is concerned, there is no clause at all providing for probation in the order of appointment. Though the language used in the appointment order is that it is a temporary appointment, the appointment has been made in a regular vacancy on merits after conducting a test. It is not a case of irregular/illegal appointment. Strictly speaking, there is no question of regularization of appointment, when the appointment is made in a vacancy and the appointment is in a manner approved by the Rules. Under the circumstances, the reversion is not justified.

13.1. The appointment order dated 30.11.2006 did not provide for probation or extended probation. Consequently, there is no provision for either discharge or termination for non-completion of satisfactory probation period. There is no implied extension also. The appointment order simply reads that the petitioner is appointed from 30.11.2006 in a relevant pay-scale. She has been selected on the basis of merits and marks obtained in the selection test.

13.2. On 11.04.2012, at the time of first promotion also as Assistant, no probation has been prescribed.

13.3. Therefore, when the appointment order did not prescribe for any probation, the reversion is not justified.

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14. It is seen that the petitioner has submitted a representation dated 08.05.2017 to the Appointing Authority, after the decision of the writ petition filed by the co-employee. Even then, the claim is not considered. Had there been application of mind, certainly the claim of the petitioner should have been accepted. Unfortunately, it has not been accepted. Under the circumstances, we deem it appropriate to set aside the impugned order and to allow the writ petition.

15. In the result, the writ petition is allowed as prayed for and the impugned proceedings of the respondent dated 31.05.2016 is quashed.

The respondent is directed to,

i) fix the original seniority of the petitioner on par with her colleagues and juniors, considering her date of appointment, i.e., 01.12.2006, with deemed completion of probation;

ii) provide all consequential promotions due along with payment of backwages, within a period of four weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (C.O.)

/True Copy/

Sub Assistant Registrar

To:

The Principal District and Sessions Judge,  
Combined District Courts Campus,  
Madurai-625 020.

+1CC to Mr.N.K.Karthik Kanna, Advocate, SR.No. 57111

W.P. (MD) No.16985 of 2017  
21.03.2018

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