

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2019

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.26278 of 2015

R.Raj Mohan

... Petitioner

Vs.

1. The District Collector,
Nagapattinam.

2. The Commissioner,
Thalaignayiru Panchayat Union,
Nagapattinam District.

... Respondents

PRAYER :

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the entire records which culminated in the order passed by the first respondent in his proceedings in Na.Ka.No.2214/2015/Voo.Va.4 dated Nil.08.2015 signed on 14.08.2015 cancelling the order declaring the probation of the petitioner in the post of Assistant and the consequential order in Na.Ka.No.2214/2015/Voo/Va.4 dated Nil.08.2015 signed on 14.08.2015 both orders served on 18.08.2015, reverting the petitioner to the post of Typist, quash both the orders and consequently direct the respondents to permit the petitioner to discharge his duties as Assistant with all consequential service and monetary benefits.

For Petitioner : Mr.S.Mani

For Respondents : Mr.R.Govindasamy
Spl. Govt. Pleader for R1
: Mr.P.S.Sivashanmugasundaram,
Addl. Govt. Pleader for R2

O R D E R

The petitioner is aggrieved against the order of the first respondent dated 14.08.2015, wherein and whereby, the first respondent has cancelled the earlier order of declaration of probation of the petitioner in the post of Assistant and reverted him to the post of Typist.

2. The case of the petitioner in short as follows:

(i) The petitioner passed B.A., Sociology and M.A., Sociology. In response to the notification issued by the Tamil Nadu Public Service Commission during the year 2006-07, he made an application for the post of Typist. Thereafter, the petitioner was selected and appointed to the post of Typist through proceedings of the Tamil Nadu Public Service Commission on 10.07.2009. On 30.11.2010, the first respondent regularised the service of the petitioner as Typist from the date of his joining. His probation was also declared by proceedings dated 19.12.2011 with effect from 07.08.2011.

(ii) Thereafter, the petitioner was promoted to the post of Assistant by proceedings dated 04.07.2012, issued by the first respondent. Further his service in the post of Assistant was also regularised on 22.11.2013. Thereafter, the impugned proceedings was passed on 14.08.2015 on the reason that the petitioner did not complete the Certificate Course in Computer on Office Automation.

3. The learned counsel for the petitioner contended that having regularised the service of the petitioner as Typist as early as on 30.11.2010 and further by granting promotion to the post of Assistant on 04.07.2012, the first respondent is not justified in passing the impugned order of reverting the petitioner to the post of Typist which action is not contemplated in G.O.Ms.No.130, dated 22.07.2008. Thus, he pointed out that in case, if the petitioner did not possess the requisite qualification within the prescribed period of two years, as per Clause 2(iii) of the said Government Order, the only consequence would be that the petitioner is not entitled to subsequent increment alone.

4. The second respondent has filed a counter affidavit, wherein, it is stated that the first respondent has issued the order of cancellation of earlier order, since the petitioner did not acquire the qualification of Certificate Course in Computer on Office Automation, within a period of two years as prescribed in G.O.Ms.No.130, Personnel and Administrative Reforms Department dated 22.07.2008 and G.O.Ms.No.179, Personnel and Administrative Reforms Department, dated 19.12.2012.

5. The learned Special Government Pleader after reiterating the reasons stated in the impugned order, submitted that the same was passed after getting explanation from the petitioner. Therefore, he contended that the said order need not be interfered with.

6. Heard both sides.

7. There is no dispute of fact that the petitioner was

appointed to the post of Typist on 31.07.2009. Perusal of the proceedings dated 30.11.2010 issued by the first respondent would show that the petitioner was regularised in the service as Typist with effect from 31.07.2009 and his probation was also declared on 07.08.2011, respectively. Further perusal of the proceedings dated 04.07.2012 issued by the first respondent would show that the petitioner was given promotion to the post of Assistant. In all those proceedings, I do not find any reservation made by the concerned authority to revisit the regularisation as well as promotion, based on the reasons stated in the present impugned communication.

8. No doubt, G.O.Ms.No.130 dated 22.07.2008 stipulated a condition that the pass in the Certificate Course in Computer on Office Automation also to be prescribed along with the qualifications for direct recruitment. However, while dealing with the cases of the existing employees in Typist/Steno-typist post, the Government has referred to in the very same Government Order at Clause 2(iii) as follows:-

"2(iii) For the existing employees (Typists/Steno-Typists) the time frame of two years may be prescribed for acquiring computer knowledge (The certificate Course in Computer on Office Automation is being conducted by the Directorate of Technical Education since June 2002 and the examination is being held twice in a year only during January and June). If they fail to possess the above said Certificate Course within the prescribed period viz., two years, they shall not draw their subsequent increment. The same shall be restored on acquiring the above said qualification."

9. A careful perusal of the above stipulation would show that the existing employees in the post of Typist/Steno-Typist have to possess the said Certificate Course within a period of two years. It further stipulated that those who have not possessed such certificate within such time, shall not draw their subsequent increment and that the increment shall be restored to the persons only on acquiring the above said qualification. Therefore, it is evident that by not possessing such technical qualification, the appointing authority is not entitled to revert the person who have not acquired the said qualification, on the other hand, it is evident that such of those employees are not entitled to get an increment alone till they acquire such qualification.

10. When such being the factual position, the first respondent has passed the impugned order and reverted the petitioner to the post of Typist, by cancelling the probation

already declared. I find that the above said impugned action of the first respondent is not supported by G.O.Ms.No.130 dated 22.07.2008. It is stated now that the petitioner has acquired the qualification in the year 2016. If that be the case, then the petitioner is entitled to get the increment only from the date of possessing such qualification. Consequently, if any increment is given to the petitioner in the post till the date of acquiring of such qualification, the same shall be recovered from the petitioner, in view of clause 2(iii) of G.O.Ms.No.130 dated 22.07.2008.

11. Accordingly, the writ petition is allowed in part and the impugned order is set aside by modifying the same as follows:-

"Since the petitioner has acquired the qualification only in the month of January 2016, the periodical increment given to the petitioner, alone shall be recovered. In other words, the petitioner is entitled to get the benefit of promotion already given to him with all other monetary benefits except the increment till he possessed the said technical qualification."

No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsk

To

1. The District Collector, Nagapattinam.
2. The Commissioner, Thalaigayiru Panchayat Union, Nagapattinam District.

+1cc to Mr.S.Mani, Advocate, S.R.No.20494
+1cc to the Government Pleader, S.R.No.20992

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PA(CO)
CS/03/04/2019