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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2021

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THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.19442 of 2018
and
W.M.P.No.22876 of 2018

(Through Video Conferencing)

A.Chandrasekaran

... Petitioner

(Cause title amended vide order date
22.09.2021 made in W.M.P.No.6624 of
2020 in WP.No.19442 of 2018 by CSNJ)

Vs.

1.The Secretary to Government,
Higher Education (G2) Department,
Fort St. George, Chennai 600 009.

2.The Director of College Education,
College Road, Nungambakkam,
Chennai 600 006.

3.The Principal,
Government Women Arts College,
Kumbakonam.

... Respondents

Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the first respondent in connection with the impugned order passed by him in G.O. (Ms) No.8, Higher Education (G2) Department, dated 17.01.2018 and quash the same in so far as the denying the declaration of probation from the date of promotion as Junior Assistant, namely 31.10.2005 and further direct the respondents to declare the probation of the petitioner in the cadre of Junior Assistant, w.e.f. 31.10.2005 and grant him all consequential service and monetary benefits



including pensionary benefits and further direct the respondents to draw and disburse the arrears of salary and pension within a reasonable time.

WEB COPY For Petitioner : Mr.K.Venkataramani, Senior Counsel
Mr.M.Muthappan

For R1 & R2 : Mr.L.S.M.Hasan Fizal, G.A.

O R D E R

This Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, to call for the records of the first respondent in connection with the impugned order passed by him in G.O. (Ms) No.8, Higher Education (G2) Department, dated 17.01.2018 and quash the same in so far as the denying the declaration of probation from the date of promotion as a Junior Assistant, namely 31.10.2005, and to further direct the respondents to declare the probation of the petitioner in the cadre of Junior Assistant, w.e.f. 31.10.2005 and grant all consequential service and monetary benefits including pensionary benefits to the petitioner, and to further direct the respondents to draw and disburse the arrears of salary and pension within a reasonable time.

2. The petitioner joined the third respondent Government Women Arts College, Kumbakonam as a Office Assistant on 13.08.1985. He was sponsored by the Employment Exchange. The petitioner was thereafter promoted as a Lab Assistant on 22.01.1990 and as a Junior Assistant on 31.10.2005.

3. The petitioner had to clear the departmental test, namely Account Test and District Officers Manual Test, within a period of 5 years and had to undergo for training in the Government Bhavanisagar Institute for 45 days. The petitioner appears to have cleared Account Test and completed the training at Government Bhavanisagar Institute. The petitioner however did not clear the District Officers Manual Test and therefore, the probation of the petitioner was not declared. The petitioner was therefore not given increments from the date of his promotion as a Junior Assistant in 2005.



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4. It is submitted that at request of the petitioner, the second respondent has sent a proposal to the Government vide letter dated 03.02.2012 for relaxation of the Rules from passing the departmental exam for declaring the probation of the petitioner and for conferring retiral benefits to the petitioner. The petitioner later attained the age of superannuation on 31.01.2013 and retired from service as an unapproved probationer.

5. The Government however finally decided to approve the probation of the petitioner with effect from 30.01.2013 just one day before the date of superannuation under Sections 31 & 33 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 vide impugned G.O. (Ms) No.8, Higher Education (G2) Department, dated 17.01.2018. The petitioner's pension has been regularised based on the last drawn salary as Junior Assistant.

6. It is the case of the petitioner that the petitioner is entitled to increments and notional benefits from the date when he was promoted as a Junior Assistant. It is submitted that alternatively, if the petitioner was reverted back to the post of Lab Assistant as the petitioner failed to clear the District Officers Manual Test, the petitioner would have been got Special Grade as a Lab Assistant. The learned senior counsel for the petitioner submits that barring the ceremonial promotion, the declaration of probation of the petitioner as Junior Assistant just one day before the date of superannuation vide impugned G.O. has resulted in a grant of lesser pension to the petitioner and therefore, the impugned G.O. (Ms) No.8, Higher Education (G2) Department, dated 17.01.2018 was liable to be interfered with. The learned senior counsel for the petitioner further submits that the probation of the petitioner should be declared with effect from the date of his promotion as Junior Assistant, i.e. 31.10.2005.

7. Appearing on behalf of the first and second respondents, the learned Government Advocate submits that the petitioner made 5 attempts in District Officers Manual Test but failed and therefore, the first respondent has sympathetically decided to grant exemption to the petitioner from passing the test. He further submits that the petitioner was entitled to the second increment from the next date of completion of probation as per Rule 23A of the Part II - General Rules for the Tamil



Nadu State and Subordinate Service [presently Section 30 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016].

WEB COPY 8. It is therefore submitted that the pay of the petitioner was fixed as per G.O.Ms.No.45, Finance (Pay Cell) Department, dated 10.02.2011 as Rs.8560 + Grade Pay 2400 on 01.01.2006 and was also fixed as Rs.8890 + Grade Pay 2400 after granting first increment of Rs.330/- on completion of one year and therefore, the last pay drawn by the petitioner was Rs.8890 + 2400. Based on the last pay drawn by the petitioner, the pension and consequential monetary benefits has been calculated.

9. The learned Government Advocate further submits that the petitioner was promoted at his own will and took responsibility as he had to pass the departmental exam within the stipulated period and therefore, the petitioner cannot claim for declaration of his probation with effect from 31.10.2005 when the petitioner was promoted as Junior Assistant and for grant of consequential monetary benefits. The learned Governments Advocate submits that the impugned G.O. is well reasoned and requires no interference.

10. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the first and second respondents.

11. The admitted facts of the case are that the petitioner did not clear the District Officers Manual Test despite 5 attempts. The respondents should have then and there reverted back the petitioner to the post of Lab Assistant. If the petitioner was reverted back to the post of Lab Assistant, the petitioner would have been got higher monetary benefits in the form of Selection and/or Special Grade depending upon the length of such services. The pension of the petitioner also would have been higher. On the other hand, the respondents have belatedly approved the probation of the petitioner on 17.01.2018 vide impugned G.O. with effect 30.01.2013 even though the request of the petitioner for exemption from the departmental test was made as early as 2012. The petitioner got no increments in the promotional post.



12. This is a fit case to interfere with the impugned G.O., considering the fact that the petitioner would have been entitled to higher Selection Grade and/or Special Grade depending upon the length of the services if the petitioner was reverted back as Lab Assistant then and there.

13. The respondents are therefore directed to re-compute the pension of the petitioner in the post of Lab Assistant by including the Selection and/or Special Grade depending upon the length of service of the petitioner. The period of service as a Junior Assistant shall be treated as the service of Lab Assistant only for the purpose of re-computation of the pension. This exercise may be carried out by the respondents within a period of twelve weeks from the date of receipt of a copy of this order.

14. This Writ Petition is partly allowed in terms of the above observations. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-V)

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Sub Assistant Registrar

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To

1.The Secretary,
Higher Education (G2) Department,
Government of Tamil Nadu,
Fort St. George, Chennai 600 009.

2.The Director of College Education,
College Road, Nungambakkam, Chennai 600 006.

3.The Principal, Government Women Arts College, Kumbakonam.

+1CC to M/s.M.Muthappan, Advocate, SR.No. 48821

W.P.No.19442 of 2018 and
W.M.P.No.22876 of 2018

AK(CO)
B.VC (22/10/2021)