IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.07.2021

CORAM:

THE HON'BLE MR.JUSTICE M.S.RAMESH

W.P.Nos.1986 & 1987 of 2018

W.P.No.1986 of 2018

S.Ramesh ...Petitioner

Vs

1.The Secretary to Government,
Revenue & Disaster Management Dept.,
Fort. St.George, Chennai-600 009.

2.The Commissioner of Revenue Adminstration,
Ezhilagam, Chepauk,
Chennai-600 005.

3.The District Collector,
Krishnagiri District,
Krishnagiri. ...Respondents

W.P.No.1987 of 2018

R.Ramesh Kumar ...Petitioner

Vs

1.The Secretary to Government,
Revenue & Disaster Management Dept.,
Fort. St.George, Chennai-600 009.

2.The Commissioner of Revenue Adminstration,
Ezhilagam, Chepauk,
Chennai-600 005.

3.The District Collector,
Krishnagiri District,
Krishnagiri. ...Respondents

Common Prayer : Writ Petitions filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus calling for entire records relating to the impugned orders passed by the 1st respondent Government in G.O.2(D).No.383 Revenue and Disaster Management Department dated 18.12.2017 and quash the same and consequently direct the 1st respondent to pass orders for the relaxation of Rule 30(b) Annexure 4 of the Tamil Nadu Ministerial Service and grant retrospective promotion as Assistant to the petitioner by including his name in the panel of the year 2010.

For Petitioner in both WPs : Mr.R.Bharath Kumar

For Respondents in both WPs : Mr.K.V.Sajeev Kumar
Government Counsel

COMMON ORDER

By consent of both the parties, these writ petitions are taken up for final disposal.

2. The names of the petitioners herein were not included in the promotional panel for the year 2010 for the post of Assistant by the respondents herein on the ground that there was a delay in completing the foundational training at the Civil Service Training Institute at Bhavanisagar, Tamil Nadu, owing to which, their probation came to be belatedly declared. Though the respondents have admitted that the delay in deputing the petitioners for the foundational training was on administrative side, they have declined to include the petitioners' names for promotion to the post of Assistant.

3. On the same set of facts, when the delay in completing the Foundational Training at the Civil Service Training Institute at Bhavanisagar, Tamil Nadu was put against similarly placed employees, this Court had found that such a delay in deputing the employees for training cannot be put against the employees. In one such order, in the case of T.Gunaseela Subramani and 2 others Vs. The Principal Secretary to Government, Commercial Taxes and Registration Department and others passed in W.P.(MD) No.15585 of 2018, dated 29.03.2021, such a view was held in the following manner:-

> "2. The petitioners herein had undergone the foundational training at the Civil Service Training Institute at Bhavanisagar, Tamil Nadu, pursuant to which, their completion of probation was declared through G.O.(D) No.164 Commercial Taxes and Registration Department dated 30.04.2015. Subsequently, the first petitioner was promoted to the post of Assistant on 15.07.2015 and the second and third petitioners were promoted on 01.07.2015 and 13.11.2015 respectively.

3. The petitioners' declaration of probation came to be cancelled through the impugned government order in G.O.(D) No.83 Commercial Taxes and Registration Department dated 26.04.2018, predominantly on the ground that, the petitioners herein had not completed their foundational training within their two years of probation period, as required under Rule 32(a)(1) of the Tamil Nadu Ministerial Service Rules and that their probation requires to be declared from the day following their completion of the foundational training.

3. Rule 32(A)(1) of the Tamil Nadu Ministerial Service Rules reads as follows:-

> “32 (A) (1) Every person appointed to a category by direct recruitment shall be on probation for a total period of two years on duty within a continuous period of three years. The individual in the cadre of Junior Assistant is eligible for promotion to the post of Assistant on satisfying the following conditions:-
> 1. His probation declared successful.
> 2. His service should be regularized in the cadre of Junior Assistant.
> 3. He should complete the foundational training at Civil Service Training Institute at Bhavanisagar, Tamil Nadu.
> 4. He should successfully complete the departmental examination conducted by the Tamil Nadu Public Service Commission.”

4. As per the aforesaid Rules, among other conditions, the probationer is required to complete the foundational training at Civil Service Training Institute, at Bhavanisagar, within the probationary period. As per Rule 26(A)(2) of the Tamil Nadu Ministerial Service Rules, the date of passing of the foundational training or departmental tests, is significant for declaration of probation. The said Rules reads as follows:-

> “26 (A) (2) in cases where the passing of an examination or test confers on a Government Servant the title to any right, benefit or concession, such title should be deemed to have accrued on the day following the last day of the examination or test which the passed. In cases where the

examination or test can be passed in installments, the title to the right, benefit or concession will be deemed to have accrued on the day following the last day of the examination in the subject or subjects in which he had passed.”

5. Admittedly, the mandatory foundational training at the Civil Service Training Institute at Bhavani Sagar was belatedly held and the petitioners were not deputed for the training, during their period of probation. Such a statement is ratified in the G.O.(D)No.164, Commercial Taxes and Administration Department dated 30.04.2015, as well as in the counter affidavit filed before this Court. The provisions of Rule 32 would apply to such probationers, who have been nominated to undergo their training during their period of probation, which is for a total period of two years on duty, within a continuous period of three years. When the petitioners were nominated for the training after more than four years, they cannot be expected to complete such training, as required under Rule 32(A) and therefore, the provision itself may not be applicable to these petitioners, particularly, when the lapse was on the part of the respondents.

6. Furthermore, there is no Rule to the effect that the training should not be completed in the second or subsequent attempts during the probation period. In other words, there is no bar for the probationers to undertake the tests in any number of attempts, within the probation period. This observation is made in the light of the counter averments of the respondents that these petitioners had completed the training in their second attempt only. Even otherwise, since the petitioners were deprived of an opportunity to participate in the training programme within their probation period, there may not be any justification on the part of the respondents to refer to the failure in completing the training at the first attempt.

7. Since there are no Regulations governing the declaration of probation for belated deputation to training, owing to administrative delays, the reference to Rule 26(A)(2) that the petitioners' declaration of probation will

commence on the day following the completion of training, is unjustifiable and illegal. Consequently, the impugned Government Order cancelling the declaration of probation of the petitioners cannot be sustained."

4. The aforesaid extract is self explanatory. Since the delay in deputing the petitioners for the training was purely on the administrative side of the respondents, the consequent denial of promotion to the petitioners in the panel for the year 2010 for the post of Assistant, cannot be justified.

5. Accordingly the impugned order dated 18.12.2017 passed by the first respondent is quashed. Consequently, there shall be a direction to the first respondent herein to pass appropriate orders by including the petitioners names in the promotional panel for the year 2010 to the post of Assistant, atleast within a period of 4 weeks from the date of receipt of a copy of this order. In view of the aforesaid direction, the petitioners shall also be entitled for all the service and monetary benefits to which they may be entitled to, with effect from 08.04.2009.

6. The writ petitions stand allowed, accordingly. No costs.

Sd/-
Assistant Registrar (CS-IV)

// True Copy //

Sub Assistant Registrar

hvk

To

1.The Secretary to Government,
Revenue & Disaster Management Dept.,
Fort. St.George, Chennai-600 009

2.The Commissioner of Revenue Adminstration,
Ezhilagam, Chepauk,
Chennai-600 005

3.The District Collector,
Krishnagiri District,
Krishnagiri.

+1cc to M/s.R.Bharath Kumar, Advocate SR.No.36371
+1cc to the Government Pleader SR.No.36963

W.P.Nos.1986 & 1987 of 2018

GPL(CO)
RVM(26/08/2021)