



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P. (MD) .Nos.15845 and 15846 of 2012

M.P. (MD)Nos.1 and 2 of 2012

in

W.P. (MD)No.15845 of 2012

C.Murugesan(Died)

Chellathai

(Petitioner substituted for the deceased sole petitioner vide Court order dated 26.06.2019 in W.M.P(MD)No.10436 of 2019)

... Petitioner in both W.Ps

Vs.

1.The Principal Secretary,
Rural Development and Panchayat Raj Department,
Secretariat,
Chennai-600 009.

2.The Director,
Directorate of Rural Development,
Panagal Building,
Saidapet,
Chennai-600 005.

3.The District Collector,
Tirunelveli,
Tirunelveli District.

4.The District Collector,
Thoothukudi,
Thoothukudi District.

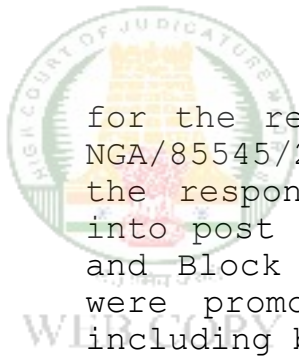
... Respondents in both W.Ps

Prayer in W.P(MD)No.15845 of 2012:

Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, to call for the records of the 1st respondent herein in his proceedings in G.O.(1D) No.434, Rural Development and Panchayat Raj Department, dated 10.07.2009 and quash the same so far as the petitioner is concerned and further to direct the 1st respondent to declare his probation deemed to be declared on the date of completion of his probation that is on 21.11.1984.

Prayer in W.P(MD)No.15846 of 2012:

Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, to call
<https://hcservices.ecourts.gov.in/hcservices/>



for the records of the 3rd respondent herein in his proceedings in NGA/85545/2007 dated 06.08.2009 and quash the same further to direct the respondents to promote petitioner from the post of Assistant into post of Extension Officer, Assistant Block Development Officer and Block Development Officer from the date on which his juniors were promoted to the respective post with all service benefits including back wages.

For Petitioner	
in both W.Ps	: Mr.G.Chandrasekar
For Respondents	: Mr.M.Lingadurai
in W.P(MD)Nos.	Government Advocate
15845 and 15846 of 2012	

COMMON ORDER

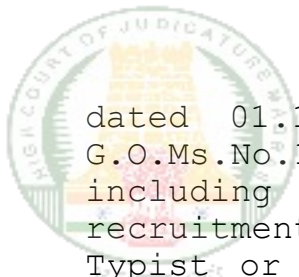
Both the writ petitions are filed by the same petitioner. Since the petitioner is these writ petitions died during the pendency of the writ petitions in the year 2013, his wife has been substituted and the writ petitions are now prosecuted by the wife of the original writ petitioner.

2(i).W.P(MD)No.15845 of 2012 has been filed by the petitioner to quash the proceedings of the first respondent in G.O(1D)No.434, Rural Development and Panchayat Raj Department, dated 10.07.2009 insofar as the petitioner is concerned and further to direct the first respondent to declare his probation which is deemed to be declared on the date of completion of his probation that is on 21.11.1984.

(ii)W.P(MD)No.15846 of 2012 has been filed by the petitioner to quash the proceedings of the third respondent in NGA/85545/2007, dated 06.08.2009 and further to direct the respondents to promote the petitioner from the post of Assistant to the post of Extension Officer, Assistant Block Development Officer, and Block Development Officer from the date on which his juniors were promoted to the respective posts with all service benefits including back wages.

3.The brief facts that are common and necessary for the disposal, are as follows.

The writ petitioner was appointed as Junior Assistant in Rural Development Department, Tirunelveli on 25.02.1982. The writ petitioner's appointment was made through Tamil Nadu Public Service Commission under Special Recruitment as per proceedings dated 30.12.1981. It is stated by the writ petitioner that he was employed as Junior Assistant from the year 1980 temporarily under the quota of physically challenged and he also belonged to Scheduled Caste. It is contended that the writ petitioner's appointment, which was made by a special recruitment process, is governed by Tamil Nadu Special Recruitment (1977 and 1981) Rules vide G.O.ms.No.1034 P&AR Dept.,



dated 01.11.1983. The case of the petitioner is that as per G.O.Ms.No.1034, dated 01.11.1983, the service of the candidates including the petitioner, who were allotted through special recruitment in 1981 and appointed to the post of Junior Assistant, Typist or Steno Typist in the Tamil Nadu Secretariat Service and Tamil Nadu Ministerial Service was to be regularized from the date 28.06.1981. Since the writ petitioner was governed by a Special Rule, it is the specific case of the petitioner that the petitioner's service should be regularized with effect from 28.06.1981.

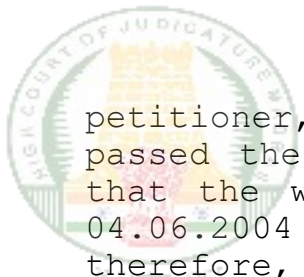
4, The petitioner was suspended from 24.07.1985 to 31.03.1992 and the period of suspension was later declared as duty period consequent to the writ petitioner proving his innocence. Vide G.O.No.349 P&AR (Personnel) Department, dated 12.04.1984, the State Government issued an amendment to the Tamil Nadu Ministerial Service. It is stated by the petitioner that the said G.O is not applicable to the candidates like writ petitioner, who was absorbed in the year 1982 by the special recruitment process. However, the relevant portion of G.O.Ms.No.1034, dated 01.11.1983 is extracted hereunder:

"8. Test for Training:-

(1) Wherever Test of Training is prescribed as a Qualification for declaration of completion of probation in a service, the candidates shall pass such test or undergo such training within one year from the 12th November 1982, failing which their increments shall be stopped for two years without cumulative effect. If they fail to pass such test or undergo such training even by the end of the fourth year, their services shall be terminated following the normal procedure."

The writ petitioner completed the Rural Welfare Officer training in the year 1985, however, the writ petitioner was not qualified by passing test which is required, as per the Service Rules. By proceedings of the District Collector dated 13.10.2003 the petitioner's probation in the post of Junior Assistant was declared with effect from 21.11.1984. The case of the writ petitioner is that he was promoted as Assistant only on 04.06.2004, even though he was entitled to be considered for promotion by taking into consideration his appointment with effect from 28.06.1981.

5. By G.O.(D) No.434, Rural Development and Panchayat Raj Department, dated 10.07.2009, the declaration of the petitioner's probation earlier by the District Collector was cancelled and it is stated that the probation of the writ petitioner and a few others named in the order should be declared with effect from the date on which they completed departmental test. In the case of the

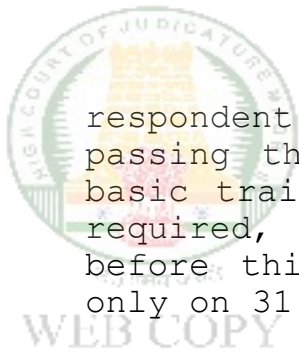


petitioner, 31.05.2002 was the date by which the writ petitioner passed the account test. In the same order, it is further stated that the writ petitioner's promotion to the post of Assistant on 04.06.2004 was approved and regularized by relaxing the rules and therefore, the promotion given to the petitioner's husband in the year 2004 was also regularized. Challenging this order, the petitioner has filed the writ petition in W.P(MD)No.15845 of 2012. The consequential prayer is to direct the first respondent to declare his probation with effect from 21.11.1984. The petitioner submitted a representation to the District Collector on 27.12.2008 to give promotion to him to the post of Assistant based on the earlier proceedings of the District Collector dated 13.10.2003 whereby the writ petitioner's probation was declared with effect from 21.11.1984, ignoring the subsequent order of Government impugned in the first writ petition. The representation of the petitioner dated 27.12.2008 was rejected by an order dated 06.08.2009 by referring to the cancellation of the collector's order dated 13.10.2003 and the fact that the petitioner passed the departmental test only in the year 2002 which is beyond the period of 5 years from the date of appointment. The petitioner has therefore filed the writ petition in W.P(MD).No.15846 of 2012 to quash the order of the third respondent dated 06.08.2009 and to direct the respondents to promote the petitioner from the post of Assistant to the post of Extension Officer, Assistant Block Development Officer and Block Development Officer with effect from the respective dated on which the writ petitioner's juniors were promoted with all service benefits.

6.The learned counsel appearing for the petitioner submitted that the impugned orders in both the writ petitions are without issuing any prior notice to the writ petitioner nor a show cause notice. Since the writ petitioner's civil right is affected by the impugned orders, the learned counsel appearing for the petitioner submitted that the impugned orders issued without hearing the writ petitioner is violative of the principles of natural justice. When the writ petitioner's probation was declared by the District Collector with effect from 21.11.1984, it is submitted that the writ petitioner's appointment should be regularized with effect from 28.06.1981 and that the same should be considered for further promotion. The learned counsel further submitted that G.O.Ms.No.349, dated 12.04.1984 cannot be relied upon to alter the service conditions of the petitioner.

7.Admittedly, the writ petitioner's probation was declared originally with effect from 21.11.1984 by an order of District Collector dated 13.10.2003. However, the order dated 13.10.2003 was cancelled by the impugned order vide G.O.(D)No.434, dated 10.07.2009.

8.The learned Government Advocate appearing for the
<https://hcs.csr.india.gov.in/hcs/cases/> relying upon the counter affidavit filed by the third



respondent submitted that the probation can be declared only after passing the departmental test. It is further stated that without basic training and passing the qualifying department test which is required, a person cannot complete the probation. It is admitted before this Court that the petitioner passed the department test only on 31.05.2002.

9.The issue before this Court is whether the petitioner's husband is entitled to be considered for promotion by treating him as one who is deemed to be in service with effect from November 1981 and deemed to have completed probation with effect from 21.11.1984.

10.The petitioner admits that he was recruited as Junior Assistant in Rural Development Department (Tamil Nadu Ministerial Service) through a Special recruitment in 1981. Similar recruitment was also made in 1977. In respect of the candidates appointed through special recruitment in 1977 and in 1981, the Government framed Special Rules titled Tamil Nadu Special Recruitments (1977 and 1981) Rules 1983 vide G.O.Ms.No.1034 Personnel and Administrative Reforms (Placement) Department, dated 01.11.1983. It is true that the service of the petitioner shall be regularized with effect from 28.06.1981 as per G.O.Ms.No.1034. However, the candidates appointed through Special recruitment shall pass the test and undergo training within one year from 12.11.1982 to avoid stoppage of increment for two years with cumulative effect. If a candidate fails to pass the test by the end of fourth year, his service has to be terminated. Admittedly, the petitioner passed the prescribed departmental test for Rural Development Department only on 31.05.2002. It is also the position that the petitioner's probation can be declared in the post of Junior Assistant only after passing the departmental test. But for the impugned Government order relaxing rules in the case of petitioner and others, the service of the petitioner has to be terminated. The petitioner has approached this Court without merits. The orders impugned in both the writ petitions are perfectly valid and the consequential prayer can never be granted. Further, it is stated in the counter that the petitioner was transferred to Tirunelveli District at his request and relinquished his right to claim seniority in the post of Assistant in 2008. The petitioner has suppressed material facts.

11.For the above reasons, these writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS II)

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/ /2021

Sub Assistant Registrar(CS)



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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

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Chennai-600 009.
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TSK (CO)
RS/PM (16.11.2021) 6P 5C