



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.07.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P (MD)No.1670 of 2021

and

W.M.P (MD)Nos.1417 & 1418 of 2021

WEB COPY

R.Kannan

... Petitioner

vs.

1.The Director of Survey and Land Records,
Chepauk, Chennai - 600 005.

2.The Assistant Director of Survey and Land Records (I/c),
Collectorate,
Sivagangai District,
Sivagangai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the second respondent in connection with the impugned order of termination passed by him vide proceedings in R.C.A4/1561/2019, dated 31.10.2020 and consequential impugned rejection order passed by the first respondent in his proceedings Na.Ka.Na.3/22039/2020 (Ne.Aa), dated 16.12.2020 and quash the both and thereby direct the respondents to extend the probation period so as to enable the petitioner to complete the departmental examination.

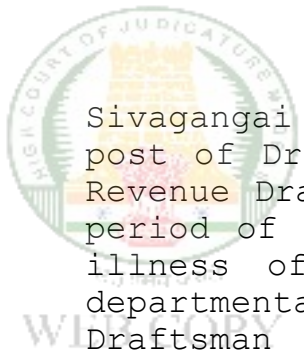
For Petitioner : Mr.D.Venkatesh

For Respondents : Mr.K.S.Selvaganesan
Government Advocate

ORDER

The petitioner has filed the present Writ Petition, to quash the impugned order of termination passed by the second respondent, dated 31.10.2020 and the consequential impugned rejection order passed by the first respondent, dated 16.12.2020 and to direct the respondents to extend the probation period so as to enable the petitioner to complete the departmental examination.

2.According to the petitioner, he participated in the recruitment process conducted by the Tamil Nadu Public Service Commission. The petitioner was selected to the post of Draftsman and appointed on 02.05.2013. The petitioner joined in the service on 17.05.2013 in the office of Assistant Director of Survey and Land Records, Tiruppur. Subsequently, he was transferred to Thirupathur,



Sivagangai District on 03.11.2014. As per Service Rules, for the post of Draftsman, the petitioner has to pass departmental test of Revenue Draftsman Paper-I to IV or CP I and II within the probation period of five years. The petitioner, due to family circumstances, illness of his wife, son and father, could not concentrate in departmental examination. He passed only three papers viz., Revenue Draftsman Paper-I, Paper-III and paper-IV and he has not passed Paper-II within the extended period of probation. The second respondent issued notice to the petitioner as to why his services should not be terminated, as he fails to pass departmental test within the extended period of time. The petitioner submitted his explanation. The second respondent, by the impugned order, dated 31.10.2020, terminated the services of the petitioner. The petitioner preferred an appeal before the first respondent. The first respondent, by the impugned order, dated 16.12.2020, rejected the appeal of the petitioner. Challenging the same, the petitioner has come out with the present Writ Petition.

3.The learned counsel appearing for the petitioner submitted that the respondents failed to consider the circumstances due to which, the petitioner could not pass Paper-II and the respondents failed to consider that the petitioner cleared three papers. As per Section 31 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, 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, discharge a probationer from the service for want of vacancy; or at his discretion, by order, either extend the period of probation of the probationer, in case the probation has been extended under Section 33 of the Act, or terminate his probation and discharge him from service after giving him a reasonable opportunity of showing cause against the proposed termination of probation. The petitioner is aged 40 years and he cannot get any Government post in future. In similar circumstances, this Court considered the issue and directed the respondents therein to give one more opportunity to participate in the next departmental examination.

4.In support of his contention, the learned counsel appearing for the petitioner relied on the following orders of this Court:

(I) M.Jaikumar Vs. The Chairman, TANGEDCO and others [W.P(MD) No.11058 of 2020, dated 07.09.2020] wherein, this Court has held as follows:-

"16. No doubt, the petitioner should have been vigilant and should have taken all earnest efforts to complete the examination within the time stipulated. However, he has missed almost two attempts without having appeared and in one attempt even though he has appeared, he failed in that attempt. In that circumstances, this



Court feels that, at this juncture, if the petitioner's services are terminated abruptly, it will have an impact on his career. Therefore, in order to balance the convenience of both sides, at the same time, without compromising the qualification of getting passed in the Tamil language examination, which is an essential condition for continuing in the job in the respondent TANGEDCO, for the petitioner, this Court is of the view that, he may be given one more chance that shall be the next attempt of language examination, whenever it is called for by the TNPSC, and in that attempt also, if the petitioner failed to clear the language examination, action may be taken for terminating his services on that ground itself.

17. In that view of the matter, this Court is inclined to dispose of this writ petition with the following order:

(i) The petitioner shall give a representation along with this order, apart from his earlier representation dated 21.05.2020, to the respondents, making a request to the respondents to give extension of time for completing the language examination in Tamil, till the next such examination is called for by the TNPSC and result is published thereon.

(ii) Once such representation is made along with the copy of this order, the respondents are hereby directed to consider the same and pass necessary orders giving such extension to the petitioner till such time, the next examination is called for by the TNPSC for the Tamil language examination.

(iii) Such extension to be given to the petitioner should be strictly restricted only till the examination is called for by the TNPSC and the date of publication of the result therefor.

(iv) It is made clear that, once such extension is given, the petitioner shall take all earnest efforts to participate in the examination and after fullfledged preparation, he should clear the same, otherwise, if he still fails in his attempt to clear the examination, it is open to the respondents to take action against the petitioner including the action of removal from service and in that case, the petitioner cannot seek any sympathy, at that time, if such a drastic action is taken by the respondents. (v) In view of the aforesaid directions, the respondents are hereby directed to pass necessary orders on such representation of the petitioner within a period of two weeks from the date of such representation along



with the copy of this order. Accordingly, the impugned order can also be reviewed and revoked by the respondents.

(vi) It is further made clear that, this extension of time giving permission to the petitioner to have one more attempt to complete the Tamil language examination shall not be treated as a precedent or as a routine way, since the concerned regulation of the TANGEDCO has made it mandatory to complete the examination within a period of two years from the date of entry into service.

18. With these directions and observations, this writ petition is disposed of. No costs. Consequently connected Miscellaneous Petition is closed."

(ii) D.Ravindran Vs. The Director, Survey and Document Department and another [W.P.No.11746 of 2021, dated 07.05.2021], wherein this Court has held as follows:-

"12. The petitioner has cleared all other papers in the year 2018 itself, except one paper, viz., Field Surveyor - Paper 2 and in 2020 exam also, he has written the examination on 15.02.2020 as he averred in para 6 of the affidavit filed in support of this writ petition and the result of the same since has not been published so far, due to the alleged Covid 19 Pandemic reason or otherwise, the petitioner can wait till the result is published for the said examination, dated 15.02.2020 and if he become successful in the said examination, as rightly pointed out by the learned Government Advocate, the petitioner would not have any further impediment to continue his job.

12. Instead if he still fails in the said examination also, the representation of the petitioner, dated 16.04.2021 can be considered by the first respondent by taking into account the aforesaid reasons which has been cited by the petitioner for his non-completion of the said Field Surveyor - Paper 2 and accordingly, decide the same for giving extension atleast till the next examination is conducted and the result is published in this regard.

13. In that view of the matter, this Court is inclined to dispose of this writ petition with the following orders :

(i) That there shall be a direction to the first respondent, to consider the representation of the petitioner, dated 16.04.2021, in case, the petitioner fail in his attempt which he has already undertaken on 15.02.2020 and consider for grant of extension at least till the next examination result is published where the petitioner without fail should appear and get it successfully to clear the paper, i.e., Field Surveyor -



Paper 2, as a last chance.

(ii) The aforesaid indulgence can be shown by the first respondent by deciding the aforesaid representation of the petitioner as indicated above, only depending upon the result to be published on the examination, dated 15.02.2020 and thereafter, the needful as indicated can be undertaken and till such time no further coercive action can be taken against the petitioner, pursuant to the show cause notice, dated 19.03.2021.

14. With these directions, this writ petition is disposed of. No costs."

5.The learned counsel appearing for the petitioner submitted that the case of the petitioner may be considered sympathetically and to give one more opportunity to the petitioner to participate in the next departmental examination or in alternative, the petitioner may be demoted to a lower post and prayed for allowing the Writ Petition.

6.The respondents filed counter-affidavit.

7.Mr.K.S.Selvaganesan, learned Government Advocate appearing for the respondents submitted that the petitioner was appointed as Draftsman on direct recruitment and he joined duty on 24.05.2013 and the probation period is 2 years. The probation period can be extended maximum period of 5 years. There is no provision to extend the probation period beyond 5 years. The petitioner has to pass four papers ie., Draftsman Test (4 papers) or computation test (2 papers) within the extended period of probation. The petitioner did not pass paper-II even after extension of 5 years. The petitioner was permitted to participate in the departmental examination held in December, 2019, which was postponed to January, 2020. The petitioner did not pass in that test also. The second respondent, as per Section 31 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, terminated the service of the petitioner. The representation given by the petitioner to the first respondent was considered and rejected by giving valid reason and the reason given in the impugned orders are valid and prayed for dismissal of the Writ Petition.

8.Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents and perused the entire materials available on record.

9.From the perusal of the entire materials available on record, it is seen that the petitioner was appointed as Draftsman by direct recruitment through TNPSC on 24.05.2013. As per the service regulation, probation period is two years, which can be extended

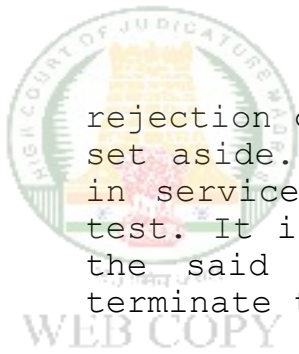


upto 5 years. An employee like the petitioner, must pass departmental test of Revenue Draftsman Paper-I to IV or CP I and II within the probation period or extended period of five years. If an employee fails to pass the departmental examination, he will be terminated from service. The petitioner joined on 24.05.2013 and he wrote examination and he passed only three papers. According to the petitioner, due to his family problem and various illness of his wife, son and father, he could not concentrate and pass in paper-II. The petitioner was permitted to participate in the departmental test to be held in December, 2019, which was postponed to January, 2020. In the said departmental test also, the petitioner was not successful in paper-II. In view of the same, after notice to the petitioner, the second respondent by impugned proceedings, dated 31.10.2020, terminated the service of the petitioner. The petitioner preferred an appeal before the first respondent, which was also rejected by the first respondent by the second impugned order, dated 16.12.2020. These facts are admitted by both the learned counsel for the petitioner and the learned Government Advocate for the respondents.

10.The learned counsel for the petitioner pleaded for sympathy to give one more opportunity to the petitioner, otherwise his entire carrier would be affected. The learned counsel appearing for the petitioner relied on the order of this Court, dated 07.09.2020 in W.P(MD)No.11058 of 2020 and another order of this Court, dated 07.05.2021 in W.P.No.11746 of 2021. According to the learned Government Advocate, both the orders are not applicable to the facts of the present case as ample opportunities were given to the petitioner and even after 7 years, the petitioner was not successful in paper-II. There is no provision for giving one more opportunity to the petitioner.

11.It is no doubt true that the respondents have extended probation to a maximum period of 5 years and gave an opportunity to the petitioner to participate in the departmental test upto January, 2020. At the same time, by the impugned order of the second respondent, the petitioner's service had been terminated. This has put an end to the carrier of the petitioner. The petitioner is aged 40 years and as rightly contended by the learned counsel for the petitioner, the petitioner cannot get another appointment in Government service. It is not in dispute that the petitioner has cleared 3 papers and he could not pass only one paper.

12.Considering the contention of the learned counsel appearing for the petitioner, age of the petitioner and the order of this Court, dated 07.09.2020 in W.P(MD)No.11058 of 2020 and another order of this Court, dated 07.05.2021 in W.P.No.11746 of 2021, referred to above, it will be in the interest of justice, the petitioner is given one more opportunity to participate in the departmental test paper-II. In view of the above, the impugned order passed by the second respondent, dated 31.10.2020 and the consequential impugned



rejection order passed by the first respondent, dated 16.12.2020 are set aside. The respondents are directed to reinstate the petitioner in service and permit him to participate in the next departmental test. It is also made clear that if the petitioner fails to pass in the said departmental test, it is open to the respondents to terminate the service of the petitioner.

13. With the above direction, the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ps

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

1. The Director of Survey and Land Records,
Chepauk, Chennai - 600 005.

2. The Assistant Director of Survey and Land Records (I/c),
Collectorate,
Sivagangai District,
Sivagangai.

+1 CC to M/s.GP (SR-23500[F] dated 22/07/2021)

+1 CC to M/s.D.VENKATESH, Advocate (SR-23603[F] dated 23/07/2021)

W.P(MD)No.1670 of 2021
20.07.2021

CM(CO)
LR (02.08.2021) 7P 5C