



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON:	19.02.2021
DELIVERED ON:	29.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P. (MD)No.15585 of 2018

and W.M.P. (MD) Nos.14005 & 14006 of 2018

(Through Video Conference)

- 1) T.Gunaseela Subramani
- 2) G.Venkateswari
- 3) R.Gowthaman ... Petitioners

Vs

- 1) The Principal Secretary to Government,
Commercial Taxes and Registration Department.
Fort St.George,
Chennai 600 009
- 2) The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai.
- 3) The Joint Commissioner (ST),
Madurai Commercial Taxes Division,
Dr.Thangarajan Salai,
Madurai.
- 4) The Joint Commissioner (ST),
Chennai North Commercial Taxes Division,
Chennai. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the record pertaining to the impugned order of the first respondent dated 26.04.2018 made in G.O.(D) No.83, Commercial Taxes and Registration (A2) Department and quash the same as illegal and unlawful.

For Petitioner : Mr.J.Pooventhera Rajan

For Respondents : Mrs.J.Padmavathi Devi,
Special Government Pleader



ORDER

All the three petitioners herein, were appointed on compassionate grounds to the posts of Junior Assistants in the Commercial Tax Department, Government of Tamil Nadu. While the services of the first and third petitioners were regularised with effect from 26.03.2010, the second petitioner's service was regularised on 25.03.2010.

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.

4. 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."

5. 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."

6. 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.

7. 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.

8. 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.

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9. Accordingly, the impugned order of the first respondent dated 26.04.2018 made in G.O.(D) No.83, Commercial Taxes and Registration (A2) Department is quashed and the Writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AE)

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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:

- 1) The Principal Secretary to Government,
Commercial Taxes and Registration Department.
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- 4) The Joint Commissioner (ST),
Chennai North Commercial Taxes Division, Chennai.

Order made in

W.P. (MD)No.15585 of 2018

Dated: 29.03.2021

KG (CO)

TR(23.04.2021) 4P 5C