



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED: 30.09.2021**

**CORAM**

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR**

**W.P. (MD)No.6917 of 2017**

**and**

**W.M.P. (MD)No.5464 of 2017**

WEB COPY

T.Aathi Shiva

... Petitioner

vs.

1.The Additional Chief Secretary to Government,  
Department of Commercial Taxes and Registration,  
Fort St.George, Chennai - 600 009.

2.The Commissioner of Commercial Taxes,  
Ezhilagam, Chepauk, Chennai - 600 005.

3.The Joint Commissioner of Commercial Taxes,  
Madurai Division, Madurai - 625 020. ... Respondents

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records of the first respondent in G.O.(D)No.388, dated 31.10.2016 and quash the same as illegal and unlawful and to direct the first respondent herein to declare the petitioner's probation period completed on 26.04.2013 and further to direct the second and third respondents to provide subsequent promotions by taking into account of the petitioner's service rendered in the cadre of Junior Assistant with effect from 25.04.2011 along with monetary benefits within a time frame, as may be stipulated by this Court.

For Petitioner : Mr.J.Pooventhira Rajan

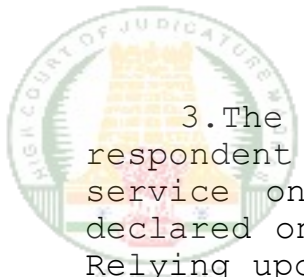
For Respondents : Mr.M.Linga Durai  
Government Advocate

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**O R D E R**

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus to quash the G.O.(D)No.388, dated 31.10.2016 and to direct the first respondent to declare the petitioner's probation as completed with effect from 26.04.2013 and to provide promotions to the petitioner taking into account the petitioner's service rendered in the cadre of Junior Assistant with effect from 25.04.2011 along with all monetary benefits.

2.Heard Mr.J.Pooventhira Rajan, learned Counsel appearing for the petitioner and Mr.M.Linga Durai, learned Government Advocate appearing for the respondents.



3.The petitioner was appointed as Junior Assistant in the respondent department under compassionate appointment and joined in service on 25.04.2011. As per Rules, the probation has to be declared on completion of two years within a period of three years. Relying upon the Rules, it is stated that the petitioner is required to complete departmental examination as well as the foundational training at Civil Service Training Institute at Bhavani Sagar. The petitioner's service was regularised in time. It is also admitted that the petitioner has completed the department examination in time. However, it is admitted that the petitioner was deputed to the foundational training at Civil Service Training Institute at Bhavani Sagar only between 21.11.2015 and 02.01.2016. It is admitted that the delay in deputing the petitioner to the foundational training was due to administrative reasons. It is also admitted that the petitioner did foundational training between 21.11.2015 and 02.01.2016 and passed all the examinations except Mathematics, which he cleared on 21.05.2016.

4.The petitioner's probation was declared only with effect from 22.05.2016, by order, dated 31.10.2016. Challenging the said order, dated 31.10.2016, by which the petitioner's probation was declared with effect from 22.05.2016, the above Writ Petition is filed with further prayers which are consequential.

5.It is the case of the petitioner that deputing the petitioner for undergoing training was delayed due to administrative reasons and that the petitioner is not at fault for completing the training only on 2016. The learned Counsel for the petitioner submitted that on completion of foundational course, the first respondent should declare probation of petitioner on par with his juniors and that the impugned order declaring petitioner's probation completed on 22.05.2016 is therefore, discriminatory and violates Article 14 of Constitution of India.

6.The learned Counsel also relied upon a few judgments of this Court, wherein, it is held that the declaration of probation should be with effect from date of completion of department tests and the declaration of probation cannot be taken from the date when the petitioner completed foundational training, if the delay was on account of administrative reasons.

7.A learned Single Judge of this Court in W.P.(MD)No.25006 of 2019, dated 16.02.2021, in the case of **M.Balamurugan vs State of Tamil Nadu and others**, considered similar issue with identical facts and held as follows:

*"4.Admittedly, the respondents herein had not conducted any training programme during the two years probation period of the petitioner. The third respondent, in his counter affidavit also ratified that due to large number of persons being deputed for training at the Civil*



Service Training Institute, Bhavanisagar, they had belatedly deputed him for the training in the month of December 2015 only. As such, the stand taken by the petitioner that the delay in deputing the petitioner for the training is not on the part of the petitioner and therefore it cannot be put against him seems acceptable. It is also not stated in the counter affidavit as to which regulation is an impediment for declaration of probation to the probationers, who had not cleared the training in the first attempt. Apart from the bald statement that the failure in the first attempt is an slackness on the probationer, no reliance has been placed on any rule or regulation in this regard. When the petitioner herein had raised a ground with regard to discrimination, to the effect that, when similarly placed probationers have been declared to have cleared probation from the date of completion of the two years, the respondents have not countered the same with any justifiable or legal stand. The only attempted justification is that the petitioner cannot claim parity with the other employees, because he had failed in his first attempt. As observed earlier, failure in the first attempt is not an embargo or an impediment for consideration for the purpose of declaring the probation. In these circumstances, the impugned order declaring the petitioner's probation with effect from 22.05.2016 ie., the date of completion of the Bhavanisagar Training, is not only illegal but is also discriminatory and arbitrary. As such, the order itself cannot be sustained and consequently, the petitioner would be entitled to have the probation declared with effect from 05.01.2011, which is the date on which he had completed his two years probation period from his initial appointment."

8. In another judgment in W.P.(MD)No.15585 of 2018, dated 19.03.2021, in the case of **T.Gunaseela Subramani and two others vs Principal Secretary to the Government and others**, this Court has held as follows:

"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



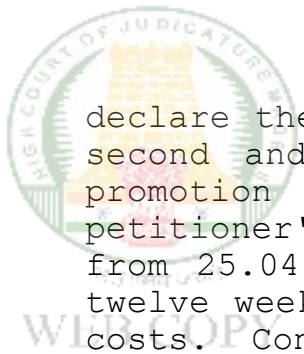
total period of two years on duty, within a continuous period of three years. When the petitioners were nominated for the training after more than four years, they cannot be expected to complete such training, as required under Rule 32(A) and therefore, the provision itself may not be applicable to these 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."

9. In this case, it is submitted that the petitioner was deputed for undergoing foundational training only between 21.11.2015 and 02.01.2016. It is also admitted that the petitioner did not pass in one out of five subjects and he passed in Mathematics subject only on 21.05.2016 in his second attempt. The question therefore, is whether the petitioner's probation can be declared only after the completion of a written test conducted during foundational training. This Court has already held that the petitioner's probation cannot be denied with effect from the date of completion of department tests, when the deputation was delayed due to administrative reasons.

10. The learned Government Advocate has not pointed out any other judgments contrary to the view expressed by this Court in similar circumstances. The first respondent declared the probation belatedly and placed the petitioner below his juniors, who are appointed subsequent to the petitioner. Merely because, there was delay in deputing the petitioner to undergo foundational training due to administrative reasons, the petitioner cannot be discriminated and the impugned order is, therefore, discriminatory and in violation of Article 14 of Constitution of India.

11. Since it is admitted that the petitioner has passed the department exam within time, his probation should be declared as completed on 26.04.2013, on completion of two years. Hence, the Writ Petition is allowed and impugned order vide G.O.(D)No.388, dated 31.10.2016, is quashed and the first respondent is directed to



declare the petitioner's probation as completed on 26.04.2013. The second and third respondents are directed to provide subsequent promotion to the petitioner by taking into account of the petitioner's service in the cadre of Junior Assistant with effect from 25.04.2011 and give all monetary benefits within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AE)

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/ /2021

Sub Assistant Registrar(CS)

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To

- 1.The Additional Chief Secretary to Government,  
Department of Commercial Taxes and Registration,  
Fort St.George, Chennai - 600 009.
- 2.The Commissioner of Commercial Taxes,  
Ezhilagam, Chepauk, Chennai - 600 005.
- 3.The Joint Commissioner of Commercial Taxes,  
Madurai Division, Madurai - 625 020.

+1 CC to M/s.SPL.GP (SR-30891[F] dated 01/10/2021)

Order made in  
W.P. (MD)No.6917 of 2017  
30.09.2021

SB(CO)  
GC(20.10.2021) 5P 5C