



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.09.2021

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P. (MD)No.21799 of 2016

and

W.M.P. (MD)Nos.15585 and 15586 of 2016

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Sonachalm ... Petitioner/Petitioner
vs.
1.The Secretary to Government,
Forest Department,
St.George Fort, Chennai.
2.The Managing Director,
Arasu Rubber Corporation Limited,
Nagercoil, Kanyakumari District.
3.The Divisional Manager,
Mylar Division, Arasu Rubber Corporation Limited,
Mylar, Kanyakumari District. ... Respondents/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 pertain to the order passed by the third respondent vide Se.Mu.Aa.No.372/10/P, dated 04.08.2014 and the present confirmation order of termination passed by the same authority in Se.Mu.Aa.No.372/10/P, dated 31.10.2016 and quash the same and to direct the second and third respondents to reinstate the petitioner with all service and monetary benefits.

For Petitioner : Mr.K.P.Narayanakumar
For Respondents : Mr.M.Linga Durai
Government Advocate

O R D E R

This Writ Petition is filed for issuing a Writ of Certiorarified Mandamus to quash the impugned order passed by the third respondent, dated 04.08.2014, and 31.10.2016 and to direct the second and third respondents to reinstate the petitioner with all service and monetary benefits.

2.Heard Mr.K.P.Narayanakumar, learned Counsel appearing for the petitioner and Mr.M.Linga Durai, learned Government Advocate appearing for the respondents.

3.The petitioner's father, by name, Pushpakaran, was an employee under the Cooperative Department. Since the petitioner's father died while he was in service, the petitioner was appointed as



Junior Assistant in Arasu Rubber Corporation Limited on 30.07.2009. It is admitted that the petitioner's name was sponsored by the District Collector, as per the proceedings of Joint Managing Director and that the petitioner was absorbed under the respondent Corporation on compassionate ground.

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4.As per service rules, at the time when the petitioner joined in service, the petitioner has to pass Accountancy test in lower grade by a recognised University and the Factory and Labour Department Test Part A and B within a period of probation. However, by a Government Order vide G.O.Ms.No.132, dated 26.11.2014, the requirement of Accountancy Test in lower grade and Factory and Labour Department Test Part A and B was dispensed with by an appropriate amendment. The petitioner admitted even in the affidavit filed in support of this Writ Petition that he was appointed in 2009 and his service was regularised and placed on probation with effect from 05.08.2009. Since the petitioner did not pass the required test within the period of probation, the petitioner's service was sought to be terminated on the ground that the petitioner did not pass the prescribed tests before the period of probation.

5.The petitioner was issued with a show cause notice calling for an explanation from the petitioner as to why he should not be terminated from service, since it is mandatory as per Service Rules applicable to employees of Tamil Nadu Rubber Corporation to pass examinations, namely, Accountancy test in lower grade and Factory and Labour Department Test Part A and B within the five years prescribed for completing the probation. Though the petitioner filed a Writ Petition before this Court in W.P.(MD)No.12688 of 2014, challenging the show cause notice and obtained an order of interim stay on 04.08.2014. It is submitted by the petitioner that by virtue of G.O.Ms.No.132, dated 26.11.2014, the petitioner withdrew the said Writ Petition. However, by the impugned orders, the petitioner was terminated from service, as he had not passed the two examinations, namely, Accountancy test in lower grade and Factory and Labour Department Test Part A and B within the five years prescribed for completing the probation. Aggrieved by the same, the present Writ Petition is filed.

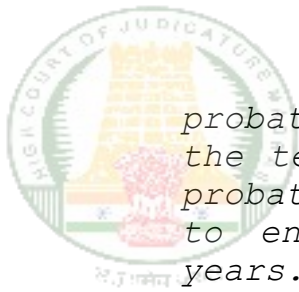
6.The learned Counsel for the petitioner submitted that the petitioner should be deemed to be in service and that the benefit extended by an amendment vide G.O.Ms.No.132, dated 26.11.2014, should be extended to the petitioner.

7.Clause of 20 (ii) and (iii) of the rules reads as follows:

"20.Extention of Probation/Termination of Probation:

(i).....

*(ii)If passing of any test(s) during probation
has been prescribed for satisfactory completion of*



probation, the probation will be extended suitably until the test(s) is/are passed. Maximum period upto which the probation of a Corporation Employee may be extended so as to enable him to acquire the test qualification is 5 years. If he/she does not acquire the test qualification even within the above said extended period of probation, he/she should be reverted to his/her substantive post and qualified and eligible juniors should be considered for promotion. If such a person has been appointed by direct recruitment and has not acquired the test qualification within the extended period of probation, his/her probation should be terminated.

(iii) If the probation is not extended or if it is not terminated within a period of 6 months from the date of completion of probation, the individual shall be deemed to have completed the probation satisfactorily."

8. The learned Counsel for the petitioner relied upon a judgment of this Court in W.P.(MD)No.17749 of 2013, dated 28.08.2014, in the case of **K.Susila vs the Additional Chief Secretary to Government and others**. In a similar situation, where, the petitioner therein who was appointed as a Junior Assistant in the respondent department, on 29.09.2008 and terminated from service, as she had not completed the Accountancy test in lower grade and Factory and Labour Department Test Part A and B, approached this Court challenging the order of termination. The petitioner therein did not complete the two tests within the prescribed period. However, the petitioner therein was not terminated from service within the probation period. Hence, clause 20(iii) of Tamil Nadu Arasu Corporation Service Rules was relied upon. The petitioner therein also relied upon the Government Order vide G.O.Ms.No.132, dated 26.11.2014. It was argued before this Court that by virtue of G.O.Ms.No.132, dated 26.11.2014, the petitioner is entitled to continue in service. It was contended by the Government that the period of probation is two years and the petitioner had not completed within the continued service period of three years by passing the tests and that therefore, the petitioner's service has to be terminated in view of Rule 29. This Court after referring to the admitted facts and G.O.Ms.No.132, dated 26.11.2014, has passed the following order:

"10. As has been rightly pointed out by the learned counsel for the petitioner Rule 20(ii)&(iii) is very clear and the probation period of two years to be completed within a period of three years service can be extended upto 5 five years or even beyond that for the purpose of completion of the test. Herein the case on hand, the petitioner joined service on 29.09.2008. Therefore, the five years period is over by 28.09.2013. However, no termination order was passed within the said period.



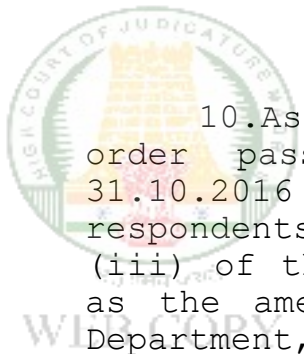
Therefore, Rule 20(ii) and (iii) are applied in the case of the petitioner, certainly, deemed probation under sub Clause (iii) of Rule 20 can very well be made applicable to the case of the petitioner. Also, in order to tide over the situation like this, the Government thought it fit to bring the amendment to the Rule, of course, subsequently by way of G.O.No.132, dated 26.11.2014.

11. When the impugned order was questioned before this Court in the writ petition, this Court has stayed the impugned order and by virtue of the same, the petitioner has been in continuous service all along. Since the petitioner's service is continuous, of course, pursuant to the orders of this Court and in the meanwhile, since G.O.Ms.No.132 has come into effect from 26.11.2014, the benefit conferred through the said amendment made pursuant to the said G.O. can also be extended to the petitioner. Moreover, the learned counsel for the petitioner is assertive that since the petitioner is having the B.Com., degree as one of her educational qualification, the requirement of passing out of the said test, namely, Accountancy test can be dispensed with. Also the deeming clause in 20(iii) can be invoked in the case of the petitioner.

12. For these reasons, the impugned order terminating the services of the petitioner cannot be sustainable one and therefore, this Court is inclined to interfere with the same and accordingly, the impugned order is quashed.

13. Resultantly, the impugned order is quashed and the matter is remitted back to the respondents for reconsideration in the light of the Rule 20(ii) and (iii) of the Rules governing the service of the petitioner as well as the amendment made pursuant to G.O.Ms.No.132 Environment and Forest Department dated 26.11.2014 as well as the fact that the petitioner is having the qualification of B.Com., degree. After reconsidering the issue in the light of the aforesaid factors, necessary orders permitting the petitioner to complete the probation and declaring the same accordingly, can also be passed by the respondents and the needful as indicated above shall be done within a period of four weeks from the date of receipt of a copy of this order."

9. Considering the judgment of this Court in a similar case, this Court is unable to take a contrary view, as the facts in this case are identical and the petitioner is also similarly placed.



10.As a result, this Writ Petition is allowed and the impugned order passed by the third respondent, dated 04.08.2014 and 31.10.2016 are quashed. The matter is remitted back to the respondents for reconsideration in the light of Rule 20(ii) and (iii) of the Rules governing the service of the petitioner as well as the amendment made vide G.O.Ms.No.132, Environment and Forest Department, dated 26.11.2014. After reconsidering the issue in the light of Rule position and amendment in Service Rules, the third respondent is directed to pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order. The Writ Petition is accordingly disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

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/ /2021

Sub Assistant Registrar(CS)

cmr/tmg

TO:-

- 1.The Secretary to Government,
Forest Department,
St.George Fort, Chennai.
- 2.The Managing Director,
Arasu Rubber Corporation Limited,
Nagercoil, Kanyakumari District.
- 3.The Divisional Manager,
Mylar Division, Arasu Rubber Corporation Limited,
Mylar, Kanyakumari District.

+1 CC to M/s.A.BALA KRISHNAN, Advocate (SR-29653[F]
dated 20/09/2021)

+1 CC to M/s.SPL. GP (SR-29787[F] dated 21/09/2021)

Order made in
W.P. (MD)No.21799 of 2016
17.09.2021

SRK(CO)
GC/JC(29.10.2021) 5P 6C