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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal No.1905 of 2021

1.The District Collector,
Nagapattinam District,
Nagapattinam.

2.The Commissioner,
Thalainayar Panchayat Union,
Nagapattinam District.

... Appellants

vs.

R.Rajmohan

... Respondent

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 05.03.2019 passed by this Court in W.P.No.26278 of 2015.

Prayer in WP.No.26278 of 2015: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the entire records which culminated in the order passed by the first respondent in his proceedings in Na.Ka.No. 2214/2015/Voo.Va.4 dated Nil.08.2015 signed on 14.08.2015 cancelling the order declaring the probation of the petitioner in the post of Assistant and the consequential order in Na.Ka.No.2214/2015/Voo.Va.4 dated Nil.08.2015 signed on 14.08.2015 both orders served on 18.08.2015 reverting the petitioner to the post of Typist, quash both the orders and consequently direct the respondents to permit the petitioner to discharge his duties as Assistant with all consequential direct the respondents to permit the petitioner to discharge his duties as Assistant with all consequential service and monetary benefits.



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For Appellants :Mr.U.M.Ravichandran,
Special Government Pleader

For Respondent :Mr.T.Sellapandian,
for Mr.S.Mani

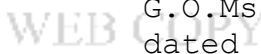
J U D G M E N T

(Judgment of the Court delivered by S.VAIDYANATHAN,J.)

Present Appeal has been preferred by the Respondents in the Writ Petition, questioning the order dated 05.03.2019 passed by the learned Single Judge in W.P.No.26278 of 2015, whereby, the proceedings of the District Collector, dated Nil.08.2015 signed on 14.08.2015 cancelling the order declaring the probation of the Writ Petitioner in the post of Assistant and the consequential order dated Nil.08.2015, signed on 14.08.2015, reverting the Writ Petitioner to the post of Typist, were interfered with.

2. The Writ Petitioner, with necessary academic qualification of M.A. Sociology and technical qualification, applied to the post of Typist based on the Notification issued by the Tamil Nadu Public Service Commission (TNPSC) during the year 2006-07. The Writ Petitioner was duly selected and appointed to the post of Typist on 10.07.2009. His services were regularized with effect from 30.11.2010 in the post of Typist from the date of his joining and his probation was also declared vide proceedings dated 19.12.2011 with effect from 07.08.2011. Thereafter, the Writ Petitioner was promoted to the post of Assistant vide proceedings dated 04.07.2012 issued by the District Collector, Nagapattinam. Further, his services in the post of Assistant were also regularized on 22.11.2013. Thereafter, the impugned order was passed on 14.08.2015 on the ground that, the Writ Petitioner did not complete the Certificate Course in Computer on Office Automation.

3. Before the learned Single Judge, the Writ Petitioner contended that, having regularized his services as Typist as early as on 30.11.2010 and granted him promotion to the post of Assistant on 04.07.2012, the District Collector, Nagapattinam, the 1st Respondent therein, is not justified in passing the impugned order of reverting him to the post of Typist, which action is not contemplated in G.O.Ms.No.130, dated 22.07.2008. According to the Writ Petitioner, he was appointed as Typist and after successful completion of his tenure as Typist, on finding him eligible to the post of Assistant, he was



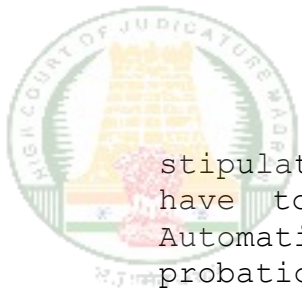
promoted as Assistant and his services in the said post were regularized on 22.11.2013.

4. It is seen that, in terms of Clause 2(iii) of G.O.Ms.No.130, Personnel and Administrative Reforms Department, dated 22.07.2008, the 1st Respondent therein passed an order reverting the Petitioner to the post of Typist from that of Assistant on the ground that he did not acquire the qualification of Certificate Course in Computer on Office Automation. For better understanding, the said Clause is extracted hereunder:

"2(iii) For the existing employees (Typists/Steno-Typists) the time frame of two years may be prescribed for acquiring computer knowledge (The Certificate Course in Computer on Office Automation is being conducted by the Directorate of Technical Education since June 2002 and the examination is being held twice in a year only during January and June). If they fail to possess the above said Certificate Course within the prescribed period viz. two years, they shall not draw their subsequent increment. The same shall be restored on acquiring the abovesaid qualification."

5. Finding that, the action of the 1st Respondent therein is not supported by G.O.Ms.No.130, dated 22.07.2008, the learned Single Judge interfered with the impugned order and allowed W.P.No.26278 of 2015, vide order dated 05.03.2019, relevant portion of which, is extracted hereunder:

"9. A careful perusal of the above stipulation would show that the existing employees in the post of Typist/Steno-Typist have to possess the said Certificate Course within a period of two years. It further stipulated that those who have not possessed such Certificate within such time, shall not draw their subsequent increment and that the increment shall be restored to the persons only on acquiring the above said qualification. Therefore, it is evident that by not possessing such technical qualification, the appointing authority is not entitled to revert the person who have not acquired the said qualification, on the other hand, it is evident that such of those employees are not



stipulated was that, the person who joined before 22.07.2008 will have to complete the Certificate Course in Computer Office Automation on or after 22.07.2008 and if not completed, probation will be extended. He further contended that, the learned Single Judge ought to have considered the provisions of Rule 26 of Tamil Nadu State and Subordinate Rules and the Explanation thereunder.

7. Learned Special Government Pleader went on to contend that, the learned Single Judge ought to have considered the fact that, promotion from one post to higher post has to be made only as per seniority in the panel for promotion and in the instant case, the name of the Writ Petitioner cannot be included in the panel for the years 2012 to 2015, due to non-completion of probation in the feeder post and that, the Writ Petitioner was initially promoted only on temporary basis.

8. It is further stated by the learned Special Government Pleader that, though the Rule has granted exemption to those employees who are already in service as on 22.07.2008, the Writ Petitioner joined the service only in the year 2009 and it is mandatory on the part of the Writ Petitioner to complete the said Certificate Course within the time prescribed and hence, the impugned order passed by the learned Single Judge has to be interfered with, as there is no challenge to G.O.Ms.No.130, dated 22.07.2008.

9. Heard the learned counsel on either side and perused the material documents available on record.

10. It is not in dispute that, pursuant to the Notification dated 15.11.2007 issued by the TNPSC, the Writ Petitioner participated in the selection process, came out successfully and appointed as Typist on 10.07.2009. On successful completion of the probation period, his services were regularized on 30.11.2010 from the date of his joining and his probation was declared vide proceedings dated 19.12.2011 with effect from 07.08.2011. Thereafter, on completion of required years of service, the Writ Petitioner was selected for promotion to the post of Assistant vide proceedings dated 04.07.2012 and his service in the post of Assistant was also regularized on 22.11.2013.

11. The question that arises for consideration is, whether, in spite of requisite qualification, the Writ Petitioner can be reverted to the post of Typist from the post of Assistant, in the light of the Government Order vide G.O.Ms.No.130, dated 22.07.2008.



12. Though the Rule vide G.O.Ms.No.130, dated 22.07.2008 has not been questioned, benefits already granted to the Writ Petitioner, cannot be taken away. For the post of Typist, the Certificate Course in Computer on Office Automation becomes mandatory, once the employee is regularized in the said post. The said Rule will be applicable only to those candidates who are in service as 'Typist' and not to the promoted post.

13. Learned Single Judge has granted the relief to the Writ Petitioner with effect from the future date of acquiring the requisite qualification. It is seen that, the Writ Petitioner has not acquired the requisite qualification in the light of Clause 2(iii) of G.O.Ms.No.130, dated 22.07.2008. Learned Single Judge has also held that, the impugned order reverting the Writ Petitioner from the post of Assistant to that of Typist, is incorrect. There is no reason as to why the Writ Petitioner has not preferred an Appeal contending that, the Rule vide G.O.Ms.No.130, dated 22.07.2008, is applicable only to those persons who are promoted to the post of 'Typist' and not to that of 'Assistant', as the Writ Petitioner had already been promoted to the post of Assistant. In any event, the Rule vide G.O.Ms.No.130, dated 22.07.2008, has not been questioned. It has been clearly held by the learned Single Judge that, the Writ Petitioner is entitled to get the benefit of promotion already given to him with all other monetary benefits except increment, till he possessed the said technical qualification. 14.

Undoubtedly, benefits accrued to an employee cannot be taken away retrospectively, unless there is a Rule to that effect on the date when a candidate was considered for appointment/promotion. Even going by the reversion order, the Writ Petitioner has not completed the Certificate Course in Office Automation within the prescribed period of two years. While so, after declaration of probation, the question of extension of probation does not arise. Once probation is declared or deemed to be declared, it cannot be extended by means of an administrative or executive order. The Writ Petitioner cannot be compelled to complete the Certificate Course in Computer in Office Automation after being promoted to the post of 'Assistant'. The said qualification is required to be acquired only for the post of 'Typist' and it is not a requisite qualification for the post of 'Assistant'.

15. In view of the aforesaid discussion, we are of the view that, the order of the learned Single Judge does not suffer from any infirmity and we are not inclined to interfere with the same.



In fine, the Writ Appeal stands dismissed. No costs.
Consequently, connected C.M.P.No.12270 of 2021 is closed.

Sd/-

Assistant Registrar(CS-VII)

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Sub Assistant Registrar

(aeb)

To:

1.The District Collector,
Nagapattinam District,
Nagapattinam.

2.The Commissioner,
Thalainayar Panchayat Union,
Nagapattinam District.

+1cc to the Government Pleader, SR.No.11981

W.A.No.1905 of 2021

PA(CO)

CB(22/03/2022)