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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2022

CORAM:

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

W.A.No. 248 of 2022
and
C.M.P.No.1812 of 2022

1.The State of Tamil Nadu
Rep. by its Principal Secretary to Government,
Rural Development and Panchayat Raj Department,
Fort St.George, Chennai-9

2.The Director,
Commissionerate of Rural Development and
Panchayat Raj,
Panagal Building, Chennai-15.

3.The District Collector,
Kancheepuram District,
Kancheepuram. .

...Appellants

-vs-

M.Narendiran

...Respondent

Prayer: Writ Appeal filed under Clause 15 of Letter Patent Act, to set aside the order dated 28.07.2021 made in W.P.No.28873 of 2017 and allow this Writ Appeal.

Prayer in W.P.No.28873 of 2017: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of certiorarified Mandamus, calling for the records relating to G.O.(1-D) No.408 Panchayat Development and Panchayat Raj (E-7) department dated 03.08.2015 on the file of the 1st respondent herein in so far as it declares the probation of the petitioner herein w.e.f. 05.04.2014 instead of 31.05.2010 and quash the same and consequently direct the respondents herein to forthwith declare the probation of the petitioner herein in the post of Junior Assistant w.e.f. 31.05.2010 the date of passing of the department test and pay all monetary benefits w.e.f. 01.06.2010.



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

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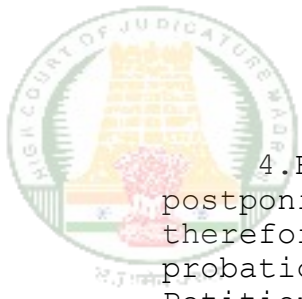
S.VAIDYANATHAN.,J
and
MOHAMMED SHAFFIQ.,J

This Writ Appeal has been filed to set aside the order dated 28.07.2021 made in W.P.No.28873 of 2017, in allowing the Writ Petition.

2. The Writ Petitioner was appointed as a Junior Assistant in the Panchayat Development Unit of Kancheepuram District on compassionate ground on 18.07.2007. The main grievance of the Writ Petitioner is that even though he had completed all the Departmental tests within a period of probation of two years in the continuous service of three years, the 3rd Appellant neither declared his probation nor sent him for training, but awaited orders of the Government in regularising his appointment on compassionate grounds, which was passed on 18.07.2007. Subsequent thereof, the Writ Petitioner was sent for training only on 27.08.2013, which caused cascading effect in his service. It is further stated that due to the administrative delay on the part of the Appellants herein in sending the Writ Petitioner for training the Writ Petitioner was deprived of promotion as Assistant and then Deputy B.D.O on par with his juniors. Hence, he filed the Writ Petitioner in W.P.No.28873 of 2017 challenging the order of Probation dated 03.08.2015. The learned Single Judge by an order dated 28.07.2021 has allowed the Writ Petition. Aggrieved by the same, the Government has preferred the present Writ Appeal.

3. It is represented by the learned counsel for the Respondent/Writ Petitioner that the Probation of the Writ Petitioner ought to have been declared with effect from 31.05.2010, instead it was declared only with effect from 05.04.2014. It is further submitted that in terms of the Rule 32 (A) (1) of the Tamil Nadu Ministerial Service Rules, the minimum period of probation is only for a period of two years within a continuous period of three years and the said Rule is extracted hereunder:

"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"



4. By relying on the aforesaid Rule, he submitted that postponing the period of probation is not permissible and therefore learned Single Judge has rightly held that the probation period has been successfully completed by the Writ Petitioner and the delay in deputing the Respondent/Writ Petitioner for the Foundational Training was purely on the part of the Appellants on the administrative side.

5. The learned Special Government Pleader appearing for the Appellants submitted that Respondent/Writ Petitioner could not be sent for Training during the year 2010 as there was no Regularisation Order from the Government dated 15.05.2013 at that time, that too, retrospectively from the date of joining. It is further submitted that the learned Single Judge failed to consider that the Respondent/Writ Petitioner was deputed for Civil Service Training on 29.06.2013 itself soon after the receipt of the Regularization Order from the Government. He further submitted that as per Sections 31(2), 31(3) and 31(5) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 (in short 'the Act, 2016'), unless a candidate successfully completes the training, there is no need for declaring probation.

6. Heard both sides. Perused the materials available on record.

7. At the first instance, we feel it appropriate to extract Sections 31(2) to 31 (5) of the Tamil Nadu Government Servants (Conditions of Service Act, 2016) which reads as follows:

31.(2) If within the period of probation, a probationer fails to acquire the special qualification or to pass the special test if any, prescribed in the special rules or to acquire such other qualification as may be declared by the Government or by the appointing authority with the approval of the Government to be equivalent to the said special qualification or special test, the appointing authority shall, by order, discharge him from the service unless the period of probation is extended under section 33.

(3) If within the period of probation prescribed in the special rules for the service or within the extended period of probation, as the case may be, a probationer has appeared for any such test or for any examination in connection with the acquisition



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of any such qualification and the result of the test or examination for which he has so appeared are not known before the expiry of such period, he shall continue to be on probation until the publication of the result of the test or examination for which he has appeared or the first of them in which he fails to pass, as the case may be, in case the probationer fails to pass any of the test or examination for which he has so appeared, the appointing authority shall, by order, discharge him from the service.

(4) The maximum period upto which the probation of a Government servant shall be extended so as to enable him to acquire the test qualification, be fixed as five years. If he does not acquire the test qualification even within the maximum period of five years, he shall be reverted and the qualified and the eligible junior shall be considered for promotion. If such a person is appointed by direct recruitment and has not acquired the test qualification even within the maximum period of five years, his probation shall be terminated.

(5) Any delay in the issue of an order discharging a probationer under sub-section (2) of sub-section (3) shall not entitle him to be deemed to have satisfactorily completed his probation."

8. A reading of the above provisions reveals that unless a probationer completes satisfactory service, including completion of qualifying the test, there is no need for declaring the probation. It is also seen that the maximum period of probation under the said Act is five(5) years.

9. A cursory glance at the Government Order in G.O.(ID) No.408, Rural Development and Panchayat Raj (E7) Department, makes it very clear that as per General Rule 26 of Tamil Nadu State and Subordinate Service Rules, the Probationers have to pass all the Departmental Tests and to complete the Training at Bhavanisagar. In the order dated 03.08.2015 impugned before the learned Single Judge, it has been stated as follows:

"4.....as per the powers given in General Rule-48 consisted in Volume-1, Part-II of Tamil Nadu State and Subordinate



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Service Rules - 1987, even though, Thiru.M.Narendiran, Junior Assistant has passed all the Departmental Tests within three years, as he has passed the examinations held at Bhavanisagar Training Institute only on 05.04.2014 in Second attempt, beyond five years, the Government have ordered that his Probation Period is extended upto 05.04.2014 A.N. ordered that he has completed the Probation period on 05.04.2014 A.N. for which the Hon'ble Governor has ordered to get his increments and arrears of monetary benefits from 06.04.2014 F.N. by relaxing the Rule 23A, 26 and 28 of Tamil Nadu State and Subordinate Service Rules and relaxing the Special Rules 34(a), Appendix V of Tamil Nadu Ministerial Service Rules."

10. On a reading of the above order, it is apparent that this Court is not inclined to accept the contention of the learned counsel for the Appellants that Rule 32(a)(i) of the Tamil Nadu Ministerial Service Rules will not be applicable. Even assuming for the sake of argument, the said Rule is not applicable as per Tamil Nadu Government Servants (Conditions of Service) Act, 2016 and the maximum period of probation is for a period of Five years as rightly held by the learned Single Judge, there is no fault on the part of the Writ Petitioner in completing the training belatedly and the delay is only on the part of the Appellants herein in deputing the Writ Petitioner for the Foundational Training belatedly.

11. The learned Judge has relied upon the judgment in the case of T.Gunaseela Subramani and others Vs The Principal Secretary to Government, Commercial Taxes and Registration Department and others and has granted relief and he has also made an emphasis with regard to the fact that the Appellants have not produced any Rules to the effect that the training should not be completed in the second or subsequent attempts during the probation period. We are of the view that there is no rule prescribed that a person, after completion of probation cannot complete the training and having allowing him to work for 7 years and confirming the probation on the subsequent date is not correct. Though it was open to the Appellants to have terminated the Writ Petitioner in the extended period of probation, in the present case on hand, he was not terminated and there is no provision in existence in respect of deemed termination.



13. The Hon'ble Apex Court, in similar circumstances, elaborately dealt with the issue in the case of Wasim Beg Versus State of Uttar Pradesh and Ors reported in AIR 1998 SC 1291, with regard to declaration of probation.

"16. However, even when the Rules prescribe a maximum period of probation, if there is a further provision in the Rules for continuation of such probation beyond the maximum period, the courts have made an exception and said that there will be no deemed confirmation in such cases and the probation period will be deemed to be extended.

17. The other line of cases deals with Rules where there is no maximum period prescribed for probation and either there is a Rule providing for extension of probation or there is a Rule which requires a specific act on the part of the employer (either by issuing an order of confirmation or any similar act) which would result in confirmation of the employee. In these cases unless there is such an order of confirmation, the period of probation would continue and there would be no deemed confirmation at the end of the prescribed probationary period."

14. In the present case on hand, the Writ Petitioner has attained the deemed declaration of probation on completion of the maximum period prescribed and he is deemed to have obtained the benefit of declaration of probation on completion of the period of 5 years prescribed under the Rules. We find no infirmity or illegality in the order passed by the learned Single Judge and this Writ Appeal is liable to be dismissed. However, it is for the Appellants to consider the case of the Writ Petitioner, regarding the grant of promotion, depending upon the Rules and Regulations that may be applicable from time to time.



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15. Accordingly, this writ appeal is dismissed. No costs.
Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

nr/arr

To

1. The Principal Secretary to Government,
The State of Tamil Nadu
Rural Development and Panchayat Raj Department,
Fort St.George, Chennai-9
2. The Director,
Commissionerate of Rural Development and
Panchayat Raj,
Panagal Building, Chennai-15.
3. The District Collector,
Kancheepuram District,
Kancheepuram.

+1cc to the Government Pleader, S.R.No.9877

W.A.No. 248 of 2022
and
C.M.P.No.1812 of 2022

NRL[co]
NSK 28/03/2022