IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.NO.23689 OF 2012

Tmt.A.Radha

...Petitioner

-Vs-

1. Government of Tamil Nadu,
   Rep. by Secretary to Government,
   Commercial Taxes and
   Registration Department,
   Secretariat, Chennai - 600 009.

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

3. The Joint Commissioner (Commercial Taxes),
   Enforcement, Salem Division, Salem.

4. The Deputy Commissioner of
   Commercial Taxes,
   Salem Division, Salem.

5. The Assistant Commissioner of
   Commercial Taxes,
   Namakkal.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the third respondent relating to the order in proceedings No.1689/2012/A1 dated 16.08.2012, to quash the same and to issue consequential directions to allow the petitioner to continue as Deputy Commercial Tax Officer and to promote her as Commercial Tax Officer consequent on the conclusion of her name in the panel for the year 2011 in proceedings No.P1/318/2011, dated 19.07.2012 of the second respondent, grant her with retrospective effect from the date of promotion of her immediate junior and to grant her all consequential benefits including revision of pay and the increments and all other service and monetary benefits consequent on her promotion.

For Petitioner : Mr.M.Ravi

For Respondents : Mr.M.Venkateswaran, Special Government Pleader

ORDER

With the consent of both the parties, this writ petition is taken up for final disposal.

2. The petitioner had originally joined as a Typist in the Commercial Taxes Department of Namakkal District on 24.10.1996. Thereafter, she was promoted to the post of Assistant on 19.11.2001. For the purpose of satisfactory completion of the probation period, an employee, who has been promoted to the post of Assistant, is required to undergo a Foundational Training in Civil Services Training Institute, Bhavanisagar. Since the petitioner was on maternity leave from 09.03.2004 to 22.04.2004, she could not undergo the training, when her name was recommended for training between 31.03.2004 and 15.05.2004. Thereafter, the respondents claim that the petitioner was directed to undergo the training, through their letter dated 02.11.2006. However, the petitioner was not permitted for the training at Bhavanisagar, since the training was meant for those who were promoted before 31.12.2001. In these circumstances, the petitioner was promoted to the post of Assistant Commercial Tax Officer (re-designated as Deputy Commercial Tax Officer). However, through the present impugned order dated 16.08.2012, the third respondent had cancelled the posting order issued to the petitioner as Deputy Commercial Tax Officer and thereby reverted her to the post of Assistant, stating that the petitioner had not completed her training in time. Aggrieved against the same, the present writ petition has been filed.

3. It is not in dispute that the respondents had initially sanctioned the medical leave to the petitioner from 09.03.2004 to 22.04.2004, owing to her pregnancy. It is during this medical leave, the respondents had initially recommended her name for the training, with effect from 31.03.2004. Apparently, the petitioner could not have undergone the training during that period, when she was admittedly on sanctioned maternity leave.

4. It is the specific case of the petitioner that the subsequent training was held on 16.03.2006, in which her name was not recommended. While that being so, when the respondents had asked her to undergo the training, through their letter

dated 02.11.2006, such a training was not meant for the petitioner at all, since the candidates, who were promoted before 31.12.2001, were deputed for that particular training. Hence, it is seen that the respondents had not subjected the petitioner for the training at the relevant point of time.

5. Even the earlier recommendation to the petitioner to undergo the training with effect from 31.03.2004 cannot be justifiable, since they themselves had sanctioned the medical leave to the petitioner between 09.03.2004 and 22.04.2004. The fault on the part of the respondents in failing to subject the petitioner for the foundational training within the stipulated time, cannot be put against the petitioner herein. The present impugned order has now been passed on the ground that she has not completed the training within the time limit.

6. In similar circumstances, an Hon'ble Division Bench of this Court in the case of Government of Tamil Nadu, Environment and Forest Department Vs. K.Anbalagan and others passed in W.A.No.2682 of 2019, dated 07.07.2021, had held that failure on the part of the authorities in not deputing the employees for the mandatory training in time, cannot be put against them, for the purpose of interfering with their promotion. The relevant portion of the judgement reads as follows:-

> "7. No doubt, the above said Rule 5 stipulates other qualification such as Vaigai Dam Training as mandatory. However, unless the appellants depute the respondents for such training at the appropriate time, they could not be expected to complete the same. The respondents, who are the employees, may not compel the appellants to depute them for the training. The alleged non-completion of the training by the writ petitioners/respondents herein within the stipulated period of not their fault and the same cannot be put against them, dis-entitling them for getting their promotion. It is also pointed out that the juniors to the respondents have marched ahead of them by getting a promotion. Therefore, the contention of the learned State Government Counsel that a person can be promoted based on merit and ability apart from seniority and the departmental promotion committee alone is competent to recommend the person fit for promotion cannot be accepted."

7. The aforesaid extract is self explanatory. As such, the impugned order, cancelling the petitioner's promotion as a Deputy Commercial Tax Officer and reverting her as Assistant, owing to the fault of the respondents in not subjecting her to the foundational training in time, cannot be sustained.

8. In the result, the impugned order passed by the third respondent dated 16.08.2012 is quashed. Consequently, the second respondent herein shall treat the petitioner as having continued in the post of Deputy Commercial Tax Officer and grant all consequential service and monetary benefits, including the promotion to the post of Commercial Tax Officer, by including her name in the panel for the year 2011. Such orders shall be passed by the second respondent within a period of eight (8) weeks from the date of receipt of a copy of this order.

9. The Writ Petition stands allowed, accordingly. No costs.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

hvk

To

1. The Secretary to Government,
   Commercial Taxes and
   Registration Department,
   Secretariat, Chennai - 600 009.

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

3. The Joint Commissioner (Commercial Taxes),
   Enforcement, Salem Division, Salem.

4. The Deputy Commissioner of
   Commercial Taxes,
   Salem Division, Salem.

5. The Assistant Commissioner of
   Commercial Taxes,
   Namakkal.

+1cc to Mr.M.Ravi, Advocate, S.R.No.16784
+1cc to the Special Government Pleader(Taxes), S.R.No.16354

W.P.No.23689 of 2012

RSI(CO)
RLP(23/03/2022)