



WP.No.17561 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.08.2022

CORAM

THE HONOURABLE MR. JUSTICE R. SURESH KUMAR

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K.Pandiammal

.. Petitioner

Versus

1.The State of Tamil Nadu,
Rep. by its Secretary to Government.
Rural Development Panchayat Raj,
Fort St. George,
Chennai – 600 009.

2.The Commissioner cum Director,
Rural Development and Panchayat Raj
Department,
Panagal Building, Saidapet,
Chennai – 600 015.

3.The District Collector,
Nagapattinam District.

.. Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Mandamus directing the respondents to refix the seniority of the petitioner in seniority list of 2015, by placing at Sl.No.16(a)



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over and above M.Kasthuri and grant promotion as Deputy Block Development Officer on par with the junior w.e.f. 30.12.2015 with all consequential service and monetary benefits including arrears to pay by considering the representation dated 08.05.2017.

For Petitioner : Mrs.T.Aananthi

For Respondents : Mr.R.U.Dinesh Rajkumar
Additional Government Pleader

ORDER

The prayer sought for herein is for a writ of Mandamus to direct the respondents to refix the seniority of the petitioner in seniority list of 2015, by placing at Sl.No.16(a) over and above M.Kasthuri and grant promotion as Deputy Block Development Officer on par with the junior with effect from 30.12.2015 with all consequential service and monetary benefits including arrears to pay by considering the representation dated 08.05.2017.

2.The petitioner was appointed as Junior Assistant on 23.05.2009 and then she was promoted as Assistant on 31.05.2013 after passing all departmental test and on completing the Bavanisagar Training from



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19.01.2012 to 18.03.2012. Her probation was declared on 31.05.2011 and her service was regularized with effect from 23.05.2009, i.e. the date on which she joined in service.

3. Thereafter, the petitioner was posted as Rural Welfare Officer Grade-II on 01.01.2010 and then posted as Rural Welfare Officer Grade-I on 30.06.2014. On posting by transfer of post as Assistant by 03.02.2006, the petitioner had been working till date at the office of the Block Development Officer, Nannilam.

4. While so, the petitioner was ranked high in the seniority list in the year 2010, 2011, 2012, 2013 and 2014 placed over and above the ranking in Sl.Nos.44, 42, 36, 36 and 25 respectively over and above one Kasthuri. Thereafter the petitioner has been pushed down in the subsequent seniority list of 2015 in Sl.No.90 while the said Kasthuri was placed at No.17 because of the reason that the petitioner's probation was declared by 31.05.2013 as the petitioner after having completed three months Bavanisagar training had completed the test not in the first attempt but only in the subsequent attempt. Therefore, on the date on which the petitioner



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exactly completed the test, she was to be declared the probation.

Accordingly, the probation was declared only on the date on which the petitioner completed the training and test on 04.12.2012 and therefore, the earlier declaration of probation and the consequential seniority declared in favour of the petitioner was set aside.

5.Felt aggrieved over the same, the petitioner had given representation to the respondents to include the petitioner's name in the correct seniority position by taking into account of the declaration of her probation by 31.05.2011 on par with the individual referred to above as both were appointed on the same day and they completed the two years period only on the same date, i.e. 31.05.2011. However, those representations since have not been considered and the petitioner's seniority has not been placed in the correct seniority position, the petitioner has approached this Court by filing the present writ petition for the aforesaid prayer.

6.Heard the learned counsel appearing for the petitioner, who would submit that insofar as the petitioner's case is concerned, she was appointed and joined as Junior Assistant on 23.05.2009 and the other individual also



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joined on the same date in the same post. Both were sent for training at Bavansagar between 19.01.2012 and 18.03.2012. Insofar as the completion of the training is concerned, both have successfully completed, however, in the test to be passed by both, the petitioner had passed the test not in the first attempt but only in the subsequent attempt, i.e. on 04.12.2012 whereas the other person completed the training with passing the test in the first attempt on 18.03.2012. Therefore, based on such completion of the training as well as passing out of the test, the petitioner's seniority has been pushed back comparing with the other person and accordingly, the petitioner's seniority got affected.

7. In this regard, the learned counsel for the petitioner would submit that, insofar as Rule 32 of the Tamil Nadu Ministerial Service Rules which speaks about probation and declaration of probation is concerned, it only speaks that the two years probation shall be declared in the continuous period of service of three years successfully and within the said period, as per the proviso, a Junior Assistant shall be allowed to count the period of foundational training undergone by him towards the prescribed period of probation.



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8. In this context, the learned counsel would submit that, since there was a belated nomination on the part of the respondents nominating both the petitioner and the other person to go for the training only in January 2012 even though they were appointed in May 2009, that belated period also now added along with the period taken by the petitioner to complete the test and thereby, they wanted to declare the probation only after completion of the test, whereas insofar as the other person is concerned, the declaration of probation has been made retrospectively on completion of two years from the date of appointment and the reason cited by the respondents for such retrospective declaration for the other person is that the said person had completed the test in the first attempt.

9. In this regard, the learned counsel for the petitioner would submit that, there is no Rule compelling the incumbent to complete the test in the first attempt itself and in the absence of any such Rule, such retrospective declaration of probation made only to the person who completed the test in the first attempt alone is a discriminatory one and not backed by any service Rule, therefore, such a declaration made in this regard to the petitioner by



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denying the declaration retrospectively with effect from the completion of two years from the date of appointment is bad in law and also not backed by any Rule. Hence, the learned counsel for the petitioner by relying upon the decision in this regard made in a batch of writ petitions by the learned Judge in the matter of *A.Gangatharan vs. The District Collector, Villupuram District and another in W.P.No.7813 of 2018* by judgment dated **10.01.2022** would seek indulgence of this Court to issue a suitable direction to declare the probation of the petitioner on completion of two years and accordingly, the seniority of the petitioner to be reckoned with.

10.Per contra, Mr.R.U.Dinesh Rajkumar, learned Additional Government Pleader appearing for the respondents would submit that, no doubt both the petitioner and the other person who has been compared by the petitioner were appointed on the same day, in sending the training to Bavanisagar, both were sent only between 19.01.2012 and 18.03.2012. On completion of the training since the other person completed the test in the first attempt itself whereas the petitioner admittedly had taken time till 04.12.2012 in completing the test. Therefore, the person who completed the test in the first attempt and the person completed the test in the second or



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third attempts cannot be treated equally, otherwise it would amount to treating unequals as equal. Therefore, it is the procedure which is in vogue that wherever after Bavanisagar training the incumbent completed the test in the first attempt probation would be declared retrospectively, i.e. on completion of two years from the date of appointment, in respect of others like the petitioner, the probation would be declared prospectively only from the date on which the test is completed. Therefore, in the case of the petitioner since the petitioner admittedly completed the training on 04.12.2012, from that date only she would be entitled to get declared of probation. Accordingly, the probation since have been declared with effect from 04.12.2012, whereas the other person who has completed the test in the first attempt on 18.03.2012 itself since was declared the probation retrospectively on completion of two years, i.e. on 31.05.2011 and certainly her seniority would be placed above the petitioner and accordingly, the seniority has been arranged between these two. Hence, the petitioner cannot have any grievance against such fixation of seniority on the petitioner. Therefore, the learned Additional Government Pleader appearing for the respondents wants dismissal of the writ petition.



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11.I have considered the rival submissions made by the learned counsels for the parties and have perused the materials placed before this Court.

12.As has been rightly pointed out by the learned counsel for the petitioner, the relevant Rule is Rule 32 of the Tamil Nadu Ministerial Service Rules. Rule 32(a)(i) makes it clear that 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. One of the Proviso to Rule 32(a)(i) states that a member of the service appointed to the post of Junior Assistant shall be allowed to count the period of Foundational Training undergone by him towards the prescribed period of probation.

13.Therefore, it become certain that the training period, i.e. Foundational Training to be undergone by the Junior Assistant at Bavanisagar shall be the part and parcel of the two years probation period.

14.However, in most of the cases the Government due to administrative delay or for want of vacancy in the training centre at Bavanisagar would send the incumbents for the said training belatedly, i.e.



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after two years, three years or even after four years.

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15.The criteria now fixed by the Government is that those who had been sent for Bavanisagar training even belatedly, i.e. after completion of two years period from the date of appointment if is able to complete the test attached with the Bavanisagar training in the first attempt would be entitled to get declaration of probation retrospectively, i.e. exactly on completion of two years from the date of appointment.

16.Insofar as others are concerned, who have not completed the test in the first attempt and if they are able to complete it in the second or third attempts, the date on which they completed the test alone would be taken into account for the purpose of declaration of probation.

17.This criteria fixed by the Government unilaterally is not supported by any Rule.

18.Exactly, this position has been clarified and declared as bad procedure by a learned Judge of this Court in the said judgment in



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A.Gangadharan's case [cited supra] where the learned Judge has considered this aspect and has given his views, which reads thus:

4.As per the aforesaid Rules, among other conditions, the probationer is required to complete the foundational training at Civil Service Training Institute, at Bhavanisagar, within the probationary period. As per Rule 26(A)(2) of the Tamil Nadu Ministerial Service Rules, the date of passing of the foundational training or departmental tests, is significant for declaration of probation. The said Rules reads as follows:-

“26 (A) (2) in cases where the passing of an examination or test confers on a Government Servant the title to any right, benefit or concession, such title should be deemed to have accrued on the day following the last day of the examination or test which he passed. In cases where the examination or test can be passed in installments, the title to the right, benefit or concession will be deemed to have accrued on the day following the last day of the examination in the subject or subjects in which he had passed.”

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



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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



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completing the training at the first attempt.

7.Since there are no Regulations governing the declaration of probation for belated deputation to training, owing to administrative delays, the reference to Rule 26(A)(2) that the petitioners' declaration of probation will commence on the day following the completion of training, is unjustifiable and illegal. Consequently, the impugned Government Order cancelling the declaration of probation of the petitioners cannot be sustained.”

19.The learned Judge has given a complete answer to the issue raised in this writ petition. The learned Judge has given his finding with regard to the interpretation of Rule 26(a)(1) and Rule 26a)(2). Also the learned Judge has stated that there is no Rule as to the effect that the training should not be completed in the second or subsequent attempts during the probation period. In that case also, it seems that the stand taken by the Government was that they have completed training only in the second attempt. Therefore, they would not be entitled to get retrospective declaration of probation and only the date on which they completed the test alone shall be taken up for the purpose of declaring the probation but that move or attempt made by the respondent in the said case also having been considered was



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rejected by the learned Judge in paragraph 6 of the order [cited supra].

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20.I am in complete agreement with the said views expressed by the learned Judge who has declared the interpretative answer to Rule 26(a)(1) and Rule 26(a)(2) as well as Rule 32 of the Tamil Nadu Ministerial Service Rules.

21.It is also brought to the notice of this Court by the learned counsel for the petitioner that, the said judgment of the writ Court has been accepted by the respondents and they acted upon and no further appeal seems to have been filed against the said decision. Therefore, at present we can take it that the issue has been settled or given a quietus by the said decision of the Writ Court.

22.Since in this case though the petitioner and other incumbent had been appointed on the same date, i.e. 23.05.2009, they had been sent for Bavanisagar training only belatedly, i.e. between 19.01.2012 and 18.03.2012, after 2½ years. That 2½ years delay attributable only on the respondents now is being counted at the head of the petitioner because she



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completed the test in the second or third attempt whereas those who completed the test in the first attempt would be entitled to get retrospective declaration of probation on completion of two years from the date of appointment. This kind of discrimination since is not been approved in any of the rule cited by the Government side cannot be approved as that would be a hostile discrimination among the two and moreover that will go against the spirit of Proviso of Rule 32 of the Tamil Nadu Ministerial Service Rules which says that the foundational training undergone by the Junior Assistant shall be allowed to be counted in the probation period.

23.If strict interpretation is to be given to the said Proviso to Rule 32 of the Tamil Nadu Ministerial Service Rules, the belated sending of the person to the training would not in any way take away the right of the incumbent to seek declaration of probation if they are otherwise qualified and merely because they have been sent for training belatedly, i.e beyond the two years period and thereafter, their declaration would be given retrospectively only for those who completed the test in the first attempt and not for others since is not provided under any Rule, it is not only discriminatory but also is an unlawful exercise. Hence, this Court has no



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hesitation to hold that the petitioner is entitled to get her probation declared on par with other incumbent, i.e. on 31.05.2011 and accordingly, she would be entitled to get a seniority in the post of Junior Assistant and consequently in the post of Assistant.

24. In view of the aforesaid discussions, this Court is inclined to dispose of the writ petition with the following orders:

1. “That there shall be a direction to the respondents to issue a suitable orders declaring the probation of the petitioner with effect from 31.05.2011, i.e. on completion of two years from the date of appointment or joining in the service as Junior Assistant.
2. As a sequel, the seniority of the petitioner also shall be placed appropriately by taking into account the seniority of the petitioner on completion of the probation with effect from 31.05.2011 and as a further consequential action, the petitioner shall be entitled to get all other service benefits including the promotional benefits which shall be conferred on her.
3. The needful as indicated above shall be undertaken by the respondents in declaring the probation and fixing the seniority within a period of eight weeks from the date of



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receipt of a copy of this order.

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25. With the above direction, this writ petition stands disposed of.

However, there shall be no order as to costs.

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Internet : Yes
Index : Yes/No
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To

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R.SURESH KUMAR, J.,

cse

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