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W.P.(MD)NO.9830 OF 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.11.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.9830 of 2018 and
W.M.P.(MD)Nos.9039 & 9040 of 2018

S.Rajesh

... Petitioner

Vs.

1. The Principal Secretary to Government ,
Youth Welfare & Sports Development Department,
Secretariat, Chennai – 600 009.
 2. The Deputy Director General,
NCC Directorate (TN,P&AN),
(State Cell),
Fort St. George, Chennai – 600 009.
 3. The Lt.Colonel,
Officer Commanding,
2(TN) Alamelu Nagar,
Pasupathi Nagar (West),
Madurai – 625 017.
 4. The Group Commander,
NCC Group Hqs, Madurai,
No.26, V.P.R.Road,
Vishalakshipuyram,
Madurai – 14.
 5. The Secretary,
Tamil Nadu Public Service Commission,
Park Town, Chennai – 600 003.
- ... Respondents



Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 3rd respondent in No.250/2/SC dated 23.02.2018 terminating the petitioner from service, quash the same and consequently direct the respondents herein to reinstate the petitioner as Junior Assistant with continuity of service.

For Petitioner : Mr.K.P.Narayanakumar

For R-1 : Mr.A.K.Manikkam,
Special Government Pleader.

For R-2 to R-4 : Mr.S.Jeyasingh,
Special Panel Counsel.

For R-5 : Mr.J.Anand Kumar,
Standing counsel.
* * *

ORDER

Heard the learned counsel on either side.

2. The petitioner's father had died in harness on 09.07.2011. The writ petitioner was appointed as Junior Assistant on compassionate ground by the third respondent vide order dated 10.06.2013. The order of appointment contains the following condition:-



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“ 6. As the individual do not possess adequate knowledge in Tamil, the individual is directed to pass the Second Language Test in Tamil conducted by the Tamil Nadu Public Service Commission within a period of two years from the date of appointment, failing which the individual would be discharged from the services of the State as per the provision of Rule 12A of Tamil Nadu State and Subordinate Service Rules.”

3. The petitioner had not cleared the said test. Therefore, by the impugned order he had been discharged from service. The order discharging the petitioner cannot be faulted. However, the petitioner seeks one more opportunity.

4. The respondents have filed counter affidavit and contended that the writ petition is not maintainable because the impugned order has been passed strictly in consonance with the stipulation set out in the order of appointment. They pressed for dismissal of the writ petition.



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5. I carefully considered the rival contentions and went through the materials on record.

6. The learned counsel appearing for the writ petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. He drew my attention to as many as four orders passed by the Madras High Court in similar circumstances. They are as follows:-

“ 1. (2009) 4 MLJ 74 (N.Prabhakaran Nair V. State of T.N.)

2. W.P.No.16309 of 2010 (Dr.S.S.Abdul Khuddus Azami V. The Principal Secretary to Government, Chennai) vide order dated 29.03.2011.

3. W.P.(MD)No.11058 of 2020 (M.Jaikumar V. The Chairman, TANGEDCO, Chennai) vide order dated 07.09.2020.

4. W.P.(MD)No.1670 of 2021 (R.Kannan V. The Director of Survey and Land Records, Chennai) vide order dated 20.07.2021.



7. In all these cases, the candidates have been given one more opportunity. I am of the view that the same indulgence can be shown in the present case also. In that view of the matter, the impugned order passed by the third respondent is set aside. The respondents are directed to reinstate the petitioner in service and permit him to participate in the next test to be held by the Tamil Nadu Public Service Commission / fifth respondent. It is made clear that if the petitioner fails to pass in the said test, it is open to the respondents to terminate the petitioner's service. The petitioner through his counsel states that he does not make any claim for payment of wages from the date of discharge till date of reinstatement. The third respondent shall reinstate the petitioner in service within a period of three weeks from the date of receipt of a copy of this order. This writ petition stands allowed on these terms. No costs. Consequently, connected miscellaneous petitions are closed.

16.11.2022

Index : Yes / No

Internet : Yes/ No

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G.R.SWAMINATHAN,J.

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To:

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