



W.P(MD)No.22211 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.11.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.22211 of 2022

and

W.M.P(MD)No.16391 of 2022

V.Mangala Sundari

... Petitioner

Vs

- 1.The State represented by
The Additional Chief Secretary
to the Government,
Labour & Employment Department,
Fort St.George,
Chennai – 600 009.
- 2.The Director,
Employment & Training,
Guindy,
Chennai – 600 032.
- 3.The Joint Director (Craftsman Training),
Employment & Training Department,
Guindy,
Chennai – 600 032.
- 4.The Principal,
Government Industrial Training Institute,
Ramanathapuram,
Ramanathapuram District.

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus,

- i) Calling for the records relating to the order passed by the first respondent herein in G.O(2d) No.24 dated 29.07.2020 and the consequential recovery order passed by the fourth respondent herein in செ.மு.ஆணை எண். 17527/ஈ/2017 நாள் 29.01.2021 quash the same as illegal;
- ii) To direct the respondents herein to declare the successful completion of the probation of the petitioner in the post of Store Keeper with effect from 15.06.2012;
- iii) To promote the petitioner to the post of Office Manager with effect from the date on which her immediate junior viz., Thiru R.Dheeban was promoted and to grant the consequential and monetary benefits and
- iv) To direct the respondents to repay the amount recovered from the petitioner's salary in pursuant to the recovery order passed by the fourth respondent herein in his proceedings செ.மு.ஆணை எண். 17527/ஈ/2017 நாள் 29.01.2021.

For Petitioner : Mr.D.Sivaraman

For Respondents : Mr.A.K.Manikkam
Special Government Pleader

ORDER

Heard the learned counsel appearing for the writ petitioner and the learned Special Government Pleader appearing for the respondents.



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2. The writ petitioner was selected for the post of Store Keeper through the recruitment process conducted by Tamil Nadu Public Service Commission (TNPSC) and appointed on 07.06.2010. The petitioner's probation was not declared within two years or the extended period of three years. It was because the petitioner was not sent to undergo Bhavani Sagar Training. The petitioner came to be sent for the said training course only on 05.05.2015. She completed the course on 20.06.2015. Out of six subjects, she successfully cleared five subjects in the first attempt itself, that is on 03.07.2015. She cleared the remaining paper on 18.12.2015. By the impugned order, the petitioner's probation was declared with effect from 19.12.2015. The increments that had been sanctioned in the meanwhile were ordered to be recovered. Challenging the same, the present writ petition has been filed.

3. The learned counsel appearing for the writ petitioner took me through the averments set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order and allow the writ petition as prayed for.

4. The respondents filed counter affidavit and the learned Special Government Pleader took me through its contents. His primary contention is that to enable declaration of probation of member of the ministerial service, he or she must have successfully completed all the special tests. Since the



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petitioner cleared all the tests only by 18.12.2015, the Government rightly declared her probation only with effect from 19.12.2015. He submitted that no relief can be granted to the writ petitioner. He would also add that when relief was given in similar cases, the said orders passed by the writ Court was stayed by the Hon'ble Division Bench in W.A.(MD)No.756 of 2021 and W.A.(MD)No.610 of 2022. He called upon this Court to dismiss the writ petition and sustain the impugned order.

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

6. There is no doubt that the writ petitioner joined the service in June 2010. I must deal with the first contention of the learned counsel appearing for the writ petitioner that on expiry of two years of continuous service of the writ petitioner she was entitled to be deemed declaration. He relies on Rule 27(b) of the Tamil Nadu State and Sub Ordinate Service Rules. It reads as follows:

“27. Probationer’s suitability for full membership -

(b) If the appointing authority decides that a probationer is suitable for such membership, it shall, as soon as possible, issue an order declaring the probationer to have satisfactorily completed his probation. If no such order is issued within six months from the date on which he is eligible for such declaration, the probationer shall be deemed to have



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satisfactorily completed his probation on the date of expiry of the prescribed or extended period of probation. A formal order declaring the completion of probation shall, however, be issued by the competent authority. In all cases in which serious charges are pending, and therefore, probation cannot be declared, an order to the effect that the question of declaration of probation cannot be considered till the charges are disposed of shall be issued by the competent authority within six months from the due date for completion of probation and the final order on probation shall be passed as early as possible and in any case within one month after the disposal of the charges or six months after the due date for completion of probation, whichever is later.”

7. I am however not persuaded by the said contention for the simple reason that the aforesaid rule contemplates a formal order to be issued by the competent authority. A member of the service cannot claim the said right unless all the statutory requirements or service conditions are fulfilled. One of the requirements is that the petitioner must have cleared all the tests. The aforesaid Clause can be invoked only if no order is passed within six months from the date on which he is eligible for such declaration. Admittedly, the petitioner has not cleared all the tests within the aforesaid period. Since the petitioner achieved eligibility only on 18.12.2005, she cannot fall back on the deeming Clause set out in Rule 27(b).



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8. However, the petitioner will succeed on the other ground urged by the learned counsel. The rule set out in annexure 5 of the Tamil Nadu Ministerial Services Rules contemplates sending the employee for Bhavani Sagar Training within two years. In the present case, virtually on the expiry of the fifth year she was sent for such training. It is not necessary that the person undergoing the course must clear the test in the first attempt itself. In the case on hand, the petitioner cleared in the second attempt. Since the employer had belatedly sent the petitioner for training, the consequence cannot fall on the employee. The employer cannot take advantage of their own wrong. If the employer had sent the petitioner for training within six months or one year her probation would have been declared well in time and she would not have to face the prospect of recovery. The respondents contend that when similar cases were allowed, they were stayed by the Hon'ble Division Bench. From the interim order relied on by the Special Government Pleader, I am not able to discern it in those cases the employees were belatedly sent for training. In any event, I am not placing any reliance on the orders that are the subject matter of challenge in the writ appeals. I am granting relief based on independent reasoning.

9. In this view of the matter, the order impugned in this writ petition is set aside. This writ petition is allowed. The respondents are directed to declare that the petitioner has completed her successful probation on the expiry of two



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years from the date of her joining service. It is stated by the learned counsel appearing for the petitioner that recovery was made pursuant to the impugned order. If so, the same shall be refunded forthwith and without any delay. All the other consequential benefits such as seniority and promotion will also follow. No costs. Consequently, connected miscellaneous petition is closed.

18.11.2022

Index : Yes / No
Internet : Yes/ No
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To

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